

SMT JUSTICE T. RAJANI

MACMA.No.563 of 2012

and

CROSS OBJECTIONS (SR).No.1067 of 2012

COMMON JUDGMENT:

This appeal is preferred by the appellant-APSRTC, who is the second respondent before the Court below, assailing the judgment of the II Additional District Judge, Vijayawada in MVOP.No.190 of 2005 dated 10.07.2007, on the grounds that the Court below did not consider the aspect of negligence in right perspective, in spite of the driver of the APSRTC bus being examined as R.W.1. The claimants filed cross-objections questioning the inadequacy of compensation.

2. Heard both sides.

3. The counsel for the cross-objectors contends that the Court below did not award adequate compensation and it did not consider the future prospects of the deceased. The counsel also relied on a latest decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017] to contend that the future hike in the income is also to be considered and the deceased, being 54 years, the future hike has to be 15% as per the said decision.

4. The monthly salary of the deceased, which is proved to be Rs.7,949/-, by virtue of Ex.A10, after considering the future hike at 15%, would come to $\text{Rs.7,949/-} + (\text{Rs.7,949/-} \times 15\%) = \text{Rs.9,141/-}$ and the annual salary would come to $\text{Rs.9,141/-} \times 12 = 1,09,0692/-$. Since the claimants are four in number, $1/4^{\text{th}}$ has to be deducted

towards the personal expenditure of the deceased as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION¹. Hence, after deducting 1/4th, the income would come to Rs.1,09,692/- - (Rs.1,09,692/- x ¼ = Rs.27,423/-) = Rs.82,269/-. The age of the deceased, being 54 years, the multiplier relevant as per the decision of the Supreme Court in SARLA VERMA's case (1 supra) is '11'. Hence, the loss of future income to the claimants would come to Rs.82,269/- x 11 = Rs.9,04,959/-. Apart from the above, following the decision of the Supreme Court in PRANAY SETHI's case (supra) Rs.40,000/- is awarded to the first claimant towards loss of consortium, Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses. Hence, in all, the claimants are entitled to total compensation of Rs.9,04,959/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.9,74,959/-, which is rounded off to Rs.9,75,000/-. Though the compensation awarded exceeds the claim, now the law is well settled by virtue of the decision of the Supreme Court in RAJESH v. RAJBIR SINGH², wherein it was held that the compensation has to be just and it can exceed the claimed amount. This Court also in ADAM INDUR MUTEMMA v. RATHOD PEDDITA³ held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

5. Hence, the award of the Court below is modified as indicated above with proportionate costs. The claimant shall pay the differential court-fee. The apportionment of compensation shall be made in the

¹ (2009) 6 SCC 121

² (2013) 9 SCC 54

³ 2015(4) ALD 585 (LB)

same proportion as made by the Court below. The award shall relate back to the date of decree and the compensation awarded shall carry the interest at the rate and from the date specified by the Court below.

The civil miscellaneous appeal is dismissed. The cross-objections are allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 27, 2017
DSK

T. RAJANI, J

