THE HON'BLE SMT. JUSTICE T.RAJANI

CROSS-OBJECTIONS No. 44507 OF 2010

IN/AND

M.A.C.M.A.No. 946 OF 2008

COMMON JUDGMENT:

Assailing the order and decree dated 28-11-2007 in O.P.No. 823 of 2005 on the file of the learned Chairman, Motor Accident Claims Tribunal – cum – VIII Additional District Judge, Nizamabad (for short, 'the Tribunal), the claimants therein preferred M.A.C.M.A.No. 946 of 2008 on the ground that the Tribunal did not award adequate compensation and respondent No. 2 – Insurance Company before the Tribunal filed cross-objections No. 44507 of 2010 questioning the compensation on the ground that there is no proof with regard to the income of Rs.2,500/- of the deceased as taken by it.

2. Heard both sides.

3. Learned counsel for the cross-objector contends that there is no proof with regard to the income of the deceased and hence notional income has to be taken. It is also contended by the said learned counsel that age proof of the deceased is also not brought on record. The deceased is said to be a commission agent. Since no evidence was adduced in support of the said plea, the Tribunal, considering the deceased as a coolie, took Rs.2,500/- as his monthly income. The age of the deceased was 24 years. Any able-bodied person would be able to earn in the least Rs.3,000/- per month and the trend of decisions of the Apex Court is as such. Hence, Rs.3,000/- can be conveniently taken as the income of the deceased. With regard to the proof of the age of the deceased, this being beneficial legislation, strict rules of evidence need not be

applied. The *post mortem* examination report and the inquest report would be helpful to assume the age of the deceased. The age mentioned in both the documents is 24. Hence, the same can be accepted. The income of the deceased having been taken as Rs.3,000/- per month, 1/3rd has to be deducted from the same towards personal expenses of the deceased. Accordingly, loss of monthly income to the claimants would be Rs.2,000/- and loss of annual income would be Rs.24,000/-. There is no dispute with regard to multiplier of 18 adopted by the Tribunal. Hence, Rs.24,000/- x 18 comes to Rs.4,32,000/-.

4. Learned counsel for the appellants contends that the Tribunal did not award adequate compensation towards funeral expenses, loss of consortium and loss of love and affection. By relying on the ruling in ***Rajesh Vs. Rajbir Singh***[1], he urges that Rs.25,000/- has to be awarded towards funeral expenses, Rs.1,00,000/- should be awarded towards loss of consortium to the 1st appellant and Rs.1,00,000/- should be awarded to the 2nd appellant towards loss of love and affection. Following the said judgment, the above amounts are awarded and hence, the award of the Tribunal is enhanced to Rs.6,57,000/-.

5. In the result, the award of the Tribunal stands enhanced by Rs.2,85,000/- making the total award as Rs.6,57,000/-. M.A.C.M.A.No. 946 of 2008 is accordingly partly allowed with proportionate costs and cross-objections No. 44507 of 2010 are dismissed. The award shall relate back to the date of decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award of the Tribunal.

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[1] 2013 (9) SCC 54

6. Pending miscellaneous petitions, if any, in these appeals shall stand closed in consequence.

T.RAJANI, J.

Date: 04-10-2017.
JSK