

HON'BLE SMT JUSTICE T.RAJANI

M.A.C.M.A.No.1051 of 2008

ORDER:

This appeal is preferred by the appellant, APSRTC, who is the respondent before the Court below, assailing the judgment of the I Additional District Judge, Medak at Sangareddy in M.V.O.P.No.672 of 2003, dated 10.01.2006, on the grounds that the negligence aspect was not considered properly and the multiplier was also wrongly applied instead of applying multiplier '16', '17' was adopted, which is erroneous.

Heard both the counsel and perused the record.

At the time of hearing, learned counsel for the appellant does not press the ground on the aspect of negligence but he contends that as per SARLA VERMA v. DELHI TRANSPORT CORPORATION¹, the multiplier applicable for the age of the deceased is '16' but the Court below adopted multiplier '17'.

In answer to the said contention, learned counsel for respondents contended that the income of the deceased was taken at only Rs.2,100/- per month in spite of the evidence of PW.1 that the deceased was working as contract labour and getting Rs.3,000/- per month. The claimants have not preferred any appeal but they contend that even without there being any appeal by the claimants, the contentions raised by them can be taken into

¹ (2009) 6 SCC 121

consideration in an appeal filed by the respondent. It is well settled that Order XLI Rule 33 of the Code of Civil Procedure empowers the Appellate Court to grant relief to a person who has neither appealed nor filed any cross-objections. The object of this provision is to do complete justice between the parties. The Supreme Court in [NAGAPPA V. GURUDAYAL SINGH](#)², held that the Court is required to determine just compensation and there is no other limitation or restriction for awarding such compensation and in appropriate cases wherefrom the evidence brought on record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award and would empower the Court to enhance the compensation at the appellate stage even without the injured filing an appeal or cross-objections.

Then we have the ruling reported in [MAHANT DHANGIR AND ANOTHER V. SHRI MADAN MOHAN AND OTHERS](#)³. In that decision, the Court took the view that the rule itself is liberal enough and that to invoke the said rule only two requirements are to be satisfied. *Firstly*, the parties before the lower court should be there before the appellate Court and *secondly*, the question raised must properly arise out of judgment of the lower Court.

² AIR 2003 SC 674

³ AIR 1988 SC 54

Learned counsel for appellant puts forth a contention that if that be the position, all the judgments have to be interfered with on the aspects, which are not raised in an appeal filed by the respondent.

The observations of the Apex Court in the rulings reported in [NIRMALA BDLA GHOSE AND ANOTHER V. BALAI CHAND GHOSE AND ANOTHER](#)⁴ and [HARIHAR PRASAD SINGH AND OTHERS V. BALMIKI PRASAD SINGH AND OTHERS](#)⁵, would take care of the concern expressed by the counsel.

The trend of the Courts is that the income of any able-bodied person has to be taken as Rs.3,000/- per month in the least, even when there is no acceptable evidence.

Hence, in that background, it has to be considered that the compensation arrived at by the lower Court is adequate. Hence, non-interference with the judgment of the lower Court would work out in favour of both the parties.

Hence, with the above observations, the appeal is dismissed.
No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE T.RAJANI

Dt: 15.09.2017
Prv/LSK

⁴ (1965) 3 SCR 550

⁵ (1975) 1 SCC 212

