SMT JUSTICE T. RAJANI

MACMA.No.443 of 2011

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants before the Court below, assailing the judgment of the III Additional Chief Judge, City Civil Court, Hyderabad in OP.No.766 of 2009 dated 26.10.2010 on the grounds that the Court below did not award adequate compensation and it ignored the income, as stated by the claimants as Rs.20,000/- per month.

2. Heard the counsel for the appellants. None appears for the respondents.

3. A perusal of the judgment of the Court below shows that it did not believe the evidence of P.W.1, who stated that the deceased was earning Rs.20,000/- per month. The claimants filed Ex.A12, receipt, issued by the Gram Panchayat, which only evidenced that the deceased was running a shop. But, however, there was no proof of income in support of the evidence of P.W.1.

4. The counsel for the appellant relied on a decision of the Supreme Court in SYED SADIQ v. DIVISIONAL MANAGER UNITED INDIA INSURANCE CO. LTD.[1] wherein the income of the vegetable vendor was taken as Rs.6,500/- per month. Hence, the same can be assumed as the income of deceased, who is a mechanic. The counsel also relied on a latest decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI [Special Leave Petition (Civil)

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[1] AIR 2014 SC 1052

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 45 years, the future hike has to be 25% as per the said decision.

5. If the future hike at 25% is added, the monthly income would come to Rs.6,500/- + (Rs.6,500/- x 25% = Rs.1,625/-) = Rs.8,125/-. Out of the said amount, 1/3rd has to be deducted towards his personal expenditure as per the decision of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[2]. Hence, after deducting 1/3rd, the loss of monthly income would come to Rs.8,125/- - (Rs.8,125/- x 1/3 = 2,708/-) = Rs.5,417/- and the loss of annual income would come to Rs.5,417/- x 12 = Rs.65,004/-. The age of the deceased, being 45 years, the multiplier relevant as per the decision of the Supreme Court in SARLA VERMA's case (2 supra) is '14'. Hence, the loss of future income to the claimants would come to Rs.65,004 x 14 = Rs.9,10,056/-. 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.9,10,056/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/- = Rs.9,80,056/-.

6. The counsel also contends that the Court below did not award the entire amount under the medical bills and it awarded only Rs.1,80,000/- out of Rs.1,85,000/-. There seems to be no reason for declining to award the said amount. Hence, the entire amount is

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[2] (2009) 6 SCC 121

awarded towards medical expenses. Hence, the total compensation comes to Rs.9,80,056/- + Rs.1,85,000/- = Rs.11,65,056/-. 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 SINGH[3], 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 PEDDITA[4] held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

7. Hence, the award of the Court below is modified as indicated above with proportionate costs. The claimants shall pay the differential court-fee. The apportionment of compensation shall be made in the 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 allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

December 15, 2017
DSK

[3] (2013) 9 SCC 54
[4] 2015(4) ALD 585 (LB)