

THE HON'BLE SMT. JUSTICE T.RAJANI

MACMA. No.2529 of 2012

JUDGMENT:

This appeal is preferred by the claimants, assailing the judgment dated 11.11.2010 passed in O.P. No.558 of 2009 by the I Additional District Judge, R.R.District at L.B.Nagar, Hyderabad, on the grounds that the Court below did not award adequate compensation and also took the age of the deceased erroneously as 45, though the Inquest report and the Postmortem report show the age as 35 years.

Heard the learned counsel on either side and perused the material on record.

This is a case of death of the deceased in a motor accident. The claimants are the wife, children and mother of the deceased. The Court below took Rs.3,000/- per month as the income of the deceased, considering that there was no evidence to show that the deceased was working as driver as pleaded in their claim. The learned counsel relies on the judgment of the Apex Court in **RAMACHANDRAPPA Vs. MANAGER, ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED**¹ wherein, for a person who works as a cooli, monthly income was taken as Rs.4,500/-. Hence the same can be adopted in the present case also. Apart from the above, following the judgment of the Apex Court in **NATIONAL INSURANCE COMPANY LIMITED Vs PRANAY SETHI AND OTHERS**² he contends that an addition of 40% of the income should be added, where the deceased was below the age of 40 years. To substantiate the age of the deceased he relies on Exs.A-3 and A-4, Inquest report and the Postmortem report, respectively, wherein it is mentioned that the deceased was aged 35 years. When even a coolie is assumed to be earning Rs.4,500/- per month, there need not be any

¹ (2011) 13 Supreme Court Cases 236

² MANU/SC/1366/2017

reason to say that the deceased, in this case, would not earn that much. The deceased was below the age of 40 years therefore, his monthly income can be taken as Rs.6,300/- (4500+1800). After deducting 1/3rd from Rs.6,300/-, the loss of monthly income to the claimants would be Rs.4,200/- (6300-2100) and annual loss would be Rs.50,400/- (4200x12). The age of the deceased was 35 years. The relevant multiplier as per **SARLA VERMA (SMT) AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER**³ is 16. Then the total loss of future income comes to Rs.8,06,400/-. Apart from the above, following the judgment of the Apex Court in **PRANAY SETHI** (2nd supra) Rs.40,000/- is awarded towards loss of consortium to the first claimant, Rs.15,000/- is awarded towards loss of estate and another Rs.15,000/- is awarded towards funeral expenses. The award would then be Rs.8,76,400/-.

When the learned counsel for the Insurance Company contended that the awarded amount can be restricted to the claim amount, the counsel for the claimants by placing reliance on the case of **JITENDRA KHIMSHANKAR TRIVEDI AND OTHERS v. KASAM DAUD KUMBHAR AND OTHERS**⁴ submits that therein it was observed that the power of the Courts in awarding reasonable compensation was emphasized by the Court in **NAGAPPA v. GURUDAYA SINGH**⁵, **ORIENTAL INSURANCE CO. LTD. V. MOHD. NASIR**⁶ and **NINGAMMA v. UNITED INDIAINSURANCE CO. LTD.**⁷. In the above rulings, it was further observed that even in case no appeal is filed by the claimants it is obligatory on the part of Courts to award just and reasonable compensation. Hence, the above amount is awarded by applying the said principle.

³ (2009) 6 Supreme Court Cases 121

⁴ (2015) 4 Supreme Court Cases 237

⁵ (2003) 2 SCC 274

⁶ (2009) 6 SCC 280

⁷ (2009) 13 SCC 710

The claimants shall however pay requisite differential Court fee on the enhanced compensation.

The award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award of the Court below.

The claimants are entitled to in the same proportion as apportioned by the Court below.

In the result, the appeal is allowed with proportionate costs.

Date: 13.07.2018
LSK

JUSTICE T. RAJANI

