HON'BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON'BLE SMT JUSTICE T. RAJANI

M.A.C.M.A. No. 689 of 2015

JUDGMENT:- (ORAL)
(Per Hon'ble Sri Justice Suresh Kumar Kait)

This appeal is preferred by the appellants – Oriental Insurance Company Limited against the order and decree dated 31.01.2014 in O.P.No. 326 of 2011 passed by the Chairman, Motor Accident Claims Tribunal-cum-XIV Additional Chief Judge (Fast Track Court), City Civil Courts, Hyderabad (for brevity "the Tribunal") whereby the Tribunal has granted compensation of Rs.45,93,000/- with interest at the rate of 7.5% per annum from the date of the petition till the date of deposit with costs.

The learned counsel for the appellants submits that the Tribunal has failed to appreciate Ex.A8 – income-tax returns for the assessment years 2008-2009, 2009-2010 and 2010-2011 wherein there is huge variation during the lifetime and after the death of the deceased, but it erroneously took the income of the deceased as Rs.30,000/- p.m. which is excessive. He further submits that during the assessment year 2008-2009, after deducting the income from the house property, the income of the deceased was Rs.2,07,011/- per annum i.e. Rs.17,250/- per month and for the assessment years 2009-2010 and 2010-2011 which were filed after the death of the deceased by his wife i.e. 27.09.2010 showing the exaggerated income @Rs.3,66,477/- and @Rs.4,22,028/- respectively, but the Tribunal without taking note of the above fact, erroneously took the income @ Rs.30,000/- p.m. and calculated the award which is highly excessive.

The brief facts of the case are that on 17.07.2010, at about 11:00 p.m., the deceased was proceeding in a car bearing No. AP10 TV 1134 from Ananthapur towards Penukonda along with the driver - Pavan Kumar and when they reached Haripura, on Penukonda - Ananthapur National Highway No.7, one lorry bearing No. AP02 W 7898 was parked in the middle of the road in a negligent manner without observing traffic rules and without showing any signal or indications or parking lights, due to which, the driver of the car dashed against the lorry from behind, due to which, the deceased sustained bleeding injuries and died on the spot and the driver of the car also sustained injuries. The accident occurred only due to the rash and negligent manner of the driver in parking his lorry without observing traffic rules.

PW1, in her evidence stated that at the time of the death of the deceased, the deceased used to earn Rs.50,000/- per month by doing draftsman work for Bharath Petroleum Corporation Limited as consultant, retail outlet designer layout planner-auto Machine and also work for companies like

Polaris-Ceedee Yes, IT Park Private Limited, HCL Limited, Tekron Software Company Limited as free lane of Architectural drawing work.

The deceased was running his own business in the name and style of N.R. Cadd Freelance of Architectural drawings at Chennai for maintaining his family. PW1 filed Ex.A6 - legal heirs certificate issued by Tahasildhar, Mylarpore, Chennai, Ex.A7 is certificate of deduction of tax (TDS Certificate), Ex.A8 is income tax returns for the years 2008-2009, 2009-2010 and 2010-2011, Ex.A9 is work allotment order Ceedee Yes, IT part Private Limited, Ex.A10 is work allotment order issued by Polaria Company Limited, Ex.A11 is bank statement of M/s.N.R.Caded of the deceased Hari Prasad Rao, Ex.A12 is passport of the deceased. She also filed Ex.A13 – bank statement of HDFC Bank (38 sheets), Ex.A14 is TDS certificate for the period from 01.04.2008 to 31.03.2009 and Ex.A15 is TDS certificate from 14.05.2009 to 06.05.2010. We note that in cross-examination, she admitted that the deceased died on 17.07.2010 and Ex.A8 – income tax return dated 31.03.2008 for the year 2008-2009 was filed on 18.05.2009 and at that time the deceased was alive. As per the said document, the total income of the deceased was Rs.2,11,730/-. She further admitted that she received an amount of Rs.62,400/- per annum from the house property in the assessment year 2010-

2011. She filed income tax returns for the years 2009-2010 and 2010-2011 on 27.09.2010 i.e. after the death of the deceased.

PW2, who is Chartered Accountant, stated that he used to file income-tax returns through their company since 2004. In the assessment year 2008-2009, the deceased filed particulars of gross income of Rs.2,40,611/- for the financial year 2007-2008. The source of income of the deceased is mainly on business i.e. an amount of Rs.2,07,011/- and the rental income is Rs.48,000/-, in total, Rs.2,40,611/-. In the assessment year 2009-2010, the deceased filed income-tax returns for his gross income of Rs.4,00,077/-. In that year, his business income was Rs.3,66,477/- and rental income was Rs.48,000/-, therefore, total gross income was Rs.4,77,000/-. In the rental income, the deceased shown his income as Rs.33,600/- after standard deduction of Rs.14,400/-. The deceased filed income tax returns for his gross income of Rs.4,65,708/- wherein his rental income was Rs.60,400/-, and after deduction of Rs.43,680/-, his business income was Rs.4,22,028/-. The main source of the income of the deceased was on his business. The deceased was the sole Proprietor of M/s.N.R.Cadd Company and used to file income-tax returns on behalf of that company. The income-tax returns for the assessment years 2009-2010 and 2010-2011 were signed and submitted by the wife of the deceased (PW1 herein).

PW3 stated in his evidence that the deceased worked as Executive Finance SS in BPCL for 27 years. He knows the deceased as a vendor of their company as he was operating in the name of M/s.N.R.Cadd and used to work with their organization as a Draftsman and preparation of various drawings of petrol pumps in Southern India. They used to pay bills for the work done by him through National Electronic Fund Transfer. They made payments to the deceased after deducting T.D.S.

Keeping in view the business run by the deceased, who was doing various works in addition to working as Executive Finance SS in BPCL, and in view of the income-tax returns for the years 2009-2010 and 2010-2011, the learned Tribunal has assessed the income-tax of the deceased at Rs.30,000/- per month. It is not the case of the appellants that the Tribunal had considered the last income-tax return filed by the wife of the deceased for the year 2010-2011 which comes to Rs.4,00,077/-. If that be the case, the average income would have come for more than Rs.30,000/-, therefore, the Tribunal took rational view, and accordingly, rightly assessed the income of the deceased at Rs.30,000/- p.m.. Hence, we find no substance in the contention put forth by the learned counsel for the appellants on this issue.

Even though no ground is raised in the appeal with regard to loss of consortium, the learned counsel for the appellants has argued that the Tribunal has awarded an amount of Rs.1.00 lakh towards loss of consortium and Rs.25,000/- towards funeral expenses. Whereas, as per the Full Bench Judgment of the Supreme Court in National Insurance Company Limited v. Pranay Sethi and Ors.[1] the claimants are entitled to only Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. Accordingly, we hereby reduce loss of consortium to Rs.40,000/- from Rs.1.00 lakh and funeral expenses are reduced to Rs.15,000/- from 25,000/-. Further, in the light of the judgment cited supra, the amount of Rs.1,00,000/- towards loss of care and guidance for minor children as awarded by the Tribunal is hereby set aside as there is a clear observation on this count that the head relating to loss of care and minor children does not exist.

We note, the Tribunal has not granted any compensation towards loss of estate. Therefore, in the interest of justice and in view of the aforesaid judgment of the Supreme Court, we hereby grant an amount of Rs.15,000/- towards loss of estate.

[1] 2017 ACJ 2700

The Tribunal has granted 30% of the income of the deceased towards future prospects, whereas, in view of the aforementioned judgment, the claimants are entitled to 25% of the monthly income of the deceased under this head. Therefore, the total compensation to be awarded in favour of the claimants by taking 25% of the monthly income of the deceased into consideration, comes to Rs.42,70,000/- as calculated hereunder:

1.	Monthly income of the deceased	-	Rs. 30,000/-
2.	25% on the monthly income towards future prospects	-	Rs. 7,500/-
			Rs. 37,500/-
3.	Income per annum i.e. Rs.37,500/- x 12	-	Rs. 4,50,000/-
4.	1/3rd of Rs.4,50,000/- towards personal expenditure of the deceased comes to	- (-)	Rs. 1,50,000/-
			Rs. 3,00,000/-
5.	By applying proper multiplier i.e. 14 x Rs.3,00,000/-, it comes to	-	Rs.42,00,000/-
6.	Non pecuniary damages:-		
a)	Loss of consortium	-	Rs. 40,000/-
b)	Funeral expenses	-	Rs. 15,000/-
c)	Loss of estate	-	Rs. 15,000/-
	Total compensation	-	Rs.42,70,000/-

In the result, the appeal is partly allowed by modifying the impugned order dated 31.01.2014 to the extent indicated above. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

18.04.2018

T. RAJANI, J

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