SMT. JUSTICE T.RAJANI

MACMA. No.2644 of 2012

JUDGMENT:

This appeal is preferred by the claimants, assailing the order dated 21.01.2011 passed in M.V.O.P. No.609 of 2009 by the I Additional Chief Judge, City Civil Court at Secunderabad on the grounds that the Court below did not grant adequate compensation and it ought to have considered Ex.A-7, salary certificate, issued by the deceased employer; it ought to have considered the evidence of the P.W.3, who deposed that the deceased was getting an amount of Rs.13,808/- as gross salary as on the date of his death; it ought to have taken the future prospects. Based on the above grounds, the claimants seek this Court to set aside the impugned judgment.

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

The facts of the case, in brief, are that on 14.10.2009, at about 10.30 pm., the deceased was proceeding by walk towards Lothukunta side, on the left side of the road. Suddenly, an RTC bus bearing No.AP 11 Z 2787 came in a rash and negligent manner and dashed the deceased. As a result, the deceased sustained severe head injury, besides other injuries all over the body. Immediately he was shifted to Gandhi hospital for treatment and thereafter, for better treatment he was taken to Care hospital at Banjara Hills, where he succumbed to the injuries, on 16.10.2009 while undergoing treatment.

The deceased was stated to be working as A/c., Mechanic in Railway department, on a monthly salary of Rs.13,000/- per month.

On behalf of the respondents, denying the averments of the petition, a counter affidavit was filed.

The Court below, considering the rival pleadings, framed appropriate issues and during the course of trial, examined P.Ws.1 to 3 and got marked Exs.A-1 to A-7 on behalf of the claimant. None were examined but Ex.B-1 was got marked on behalf of the respondents. After considering the evidence on record, the Court below awarded Rs.7,18,880/- with proportionate costs and interest at 7.5% per annum from the date of claim petition till the date of realization.

The learned counsel for the claimants, assails the impugned judgment on the ground that the net salary arrived at by the Court below is not based on any reason. The gross salary of the deceased as per Ex.A-7 is Rs.13,188/-. He contends that out of the said salary only Rs.100/-, which is the professional tax has to be deducted. From a perusal of Ex.A-7, it can be seen that Rs.3,000/- was taken as festival advance and the festival advance would not be given for all months. That might have been the special advance made for that particular month, to which Ex.A-7 pertains. P.W.3, who was examined to speak about Ex.A-7, also could not explain as to whether Ex.A-7 states that the deceased took Rs.3,000/- as festival advance. Therefore, this Court is of the view that the Court below has rightly considered the monthly gross income of the deceased at Rs.10,808/-. After deducting Rs.100/-, which is professional tax, Rs.10,708/- would be the monthly gross salary of the deceased.

There is no contention raised against the adoption of principles laid down by the Apex Court in the judgment rendered in case of ***NATIONAL INSURANCE COMPANY LIMITED Vs PRANAY SETHI AND OTHERS***[1] with regard to future prospects. The deceased, being a

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[1] MANU/SC/1366/2017

Government employee, aged 45 years, his future prospects have to be considered at the rate of 30%. Then the salary of the deceased would come to Rs.13,920/-. Out of the same, 1/3rd has to be deducted towards the personal expenses of the deceased and then the loss of monthly income would be Rs.9,280/- (Rs.4640-13920=Rs.9280/-) and the loss of annual income would be Rs.1,11,360/- (Rs.9280 x 12 = Rs.1,11,360/-). The relevant multiplier as per ***SARLA VERMA (SMT) AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER***[2] would be 14 and when the same is applied, Rs.15,59,040/- (Rs.1,19,364 x 14=15,59,040/- would be the future loss of income to the claimants. Apart from the above, following the judgment of the Apex Court in ***PRANAY SETHI*** (one 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.16,29,040/- (15,59,040 + 40,000 + 15,000 + 15,000), which can be rounded off to Rs.16,29,000/-.

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.

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

Consequently, miscellaneous applications, if any, pending shall stand closed.

JUSTICE T. RAJANI

Date: 10.08.2018
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[2] (2009) 6 Supreme Court Cases 121