THE HON'BLE SMT. JUSTICE T.RAJANI

MACMA. No.25 of 2012

JUDGMENT:

This appeal is preferred by the appellants, who are claimants before the Court below, assailing the judgment dated 21.09.2011 passed in O.P. No.125 of 2009 by the Motor Accidents Claims Tribunal-cum-VII Additional District Judge (FTC) Madanapalle, on the grounds that the Court below erroneously fixed the liability on the 1st respondent, while dismissing the claim against the 2nd respondent and it did not award adequate compensation under all heads.

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

The claim is with regard to the death of the deceased in a motor accident. The deceased is said to be running hotel business, apart from doing agriculture. He was aged 38 years and the claimants are six in number, being the wife, children and parents of the deceased. The Court below, by considering that the driver of the crime vehicle was issued driving license to drive only light motor vehicle non transport, but he drove light motor vehicle, transport vehicle, dismissed the claim against the 2nd respondent, Bajaj Allianz General Insurance Company Limited. But the counsel relies on the ruling of the Apex Court reported in ***S.IYYAPAN Vs. UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER***[1] wherein it was held that when driver drives the light motor vehicle transport, having license for only light motor vehicle non transport, the order of pay and recovery can be made. Hence, there is no quarrel on the said proposition laid down by the Apex Court. Hence, the judgment of the Court below to that extent, needs to be modified, fixing the liability jointly and severally both on respondents 1 and 2.

[1] (2013) 7 Supreme Court Cases 62

As regards the quantum of compensation, the learned counsel for the claimants submits that the Court below took Rs.3,000/- per month as the monthly income of the deceased though he was doing hotel business and was holding lands. In proof of holding of the lands Exs.A-6 and 7 filed and the same is proved beyond doubt. But the Court below, considering that they did not reflect the income of the deceased did not rely on them. Further, the learned counsel relies on the judgment of the Apex Court in ***RAMACHANDRAPPA Vs. MANAGER, ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED***[2] wherein for a person who works as a cooli, monthly income was taken as Rs.4,500/-. He also submits that dependants being six in number, 1/4th has to be deducted towards personal expenses of the deceased as per the judgment of the Apex Court in ***SARLA VERMA (SMT) AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER***[3]. Apart from the above, following the judgment of the Apex Court in ***NATIONAL INSURANCE COMPANY LIMITED Vs PRANAY SETHI AND OTHERS***[4] he contends that an addition of 40% of the income should be added where the deceased was below the age of 40 years. In the present case, even if hotel business is not proved, lands were proved. When even a coolie is assumed to be earning Rs.4,500/- per month, there need not be any 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 1/4th from Rs.6,300/-, the loss of monthly income to the claimants would be Rs.4,725/- (6300-1575) and annual loss would be Rs.56,700/- (4725x12) and the age of the deceased was 38 years for which the relevant multiplier as per ***SARLA VERMA*** (3rd supra) is 15, then the total loss of future income comes to Rs.8,50,500/-. Apart from the above, following the judgment of the Apex Court in ***PRANAY SETHI*** (4th supra) Rs.40,000/- is awarded towards loss

[2] (2011) 13 Supreme Court Cases 236
[3] (2009) 6 Supreme Court Cases 121
[4] MANU/SC/1366/2017

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 then be Rs.9,20,500/-.

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 while placing reliance in the case of **JITENDRA KHIMSHANKAR TRIVEDI AND OTHERS v. KASAM DAUD KUMBHAR AND OTHERS**[5] 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**[6], **ORIENTAL INSURANCE CO. LTD. V. MOHD. NASIR**[7] and **NINGAMMA v. UNITED INDIAINSURANCE CO. LTD.**[8]. 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.

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.

APPORTIONMENT:

The first claimant being wife of the deceased is entitled to Rs.3,20,500/-.

The second, third and fourth claimants being children of the deceased are entitled to Rs.1,50,000/- each.

[5] (2015) 4 Supreme Court Cases 237
[6] (2003) 2 SCC 274
[7] (2009) 6 SCC 280
[8] (2009) 13 SCC 710

The fifth and sixth claimants being parents of the deceased are entitled to Rs.75,000/- each.

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

JUSTICE T. RAJANI

Date: 13.07.2018
LSK