

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.2881 of 2004

The Divisional Manager,
The New India Assurance Company Ltd.,
Pondicherry.

.. Appellant

.. Vs ..

1. Kumar
2. Vasuki
3. Sargunam
4. Lakshmanan

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 16.06.2004 made in M.C.O.P.No.1271 of 2002 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Pondicherry.

For Appellant : Mr.J.Chandran
For RR-1 to 3 : Mr.V.Raghavachari
For R-4 : Served. (No Appearance)

JUDGMENT

The Insurance Company has preferred this civil miscellaneous appeal against the judgment and decree dated 16.06.2004 made in M.C.O.P.No.1271 of 2002 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Pondicherry.

2. The respondents 1 to 3 herein as claimants have filed a claim petition in M.C.O.P.No.1271 of 2002 before the learned II Additional District Judge, Motor Accidents Claims Tribunal, Pondicherry, for the death of their mother namely Saroja seeking compensation from the fourth respondent and the appellant herein. The Tribunal, after considering the oral and documentary evidence adduced on either side, awarded a sum of Rs.5,12,000/- towards compensation to the claimants and directed the fourth respondent and the appellant herein to deposit the said compensation amount along with interest at the rate of 9% per annum from the date of petition till the date of deposit. Aggrieved against the said award passed by the Tribunal, the present appeal is preferred by the appellant, who is the second respondent in the M.C.O.P.No.1271 of 2002.

3. The learned counsel appearing for the appellant/insurance company would mainly contend that according to the petition itself, the claimants have mentioned the age of the deceased as 48. But, the Tribunal, without considering the above fact, fixed the age of the deceased as 40 and adopted wrong multiplier for calculating the compensation. Hence, the learned counsel for the appellant prayed that the award passed by the Tribunal has to be set aside and the civil miscellaneous appeal has to be allowed.

4. The learned counsel appearing for the respondents 1 to 3/claimants would contend that the Tribunal, after considering the oral and documentary evidence adduced on the side of both parties, correctly passed order directing the fourth respondent herein and the appellant herein to pay a sum of Rs.5,12,000/- as compensation to the respondents 1 to 3/claimant and therefore, there is no illegality or infirmity in the award passed by the Tribunal and hence, the learned counsel prayed that the award passed by the Tribunal has to be confirmed and the civil miscellaneous appeal has to be dismissed.

5. Even though notice was served on the fourth respondent and his name is also printed in the cause list, he has not chosen to appear either in person or through counsel.

6. This Court has considered the submissions made by the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 3 and perused the entire records.

7. On reading of the petition, it is seen that the age of the deceased Saroja was mentioned as 48 in the petition itself. Further, in the petition, the age of the first claimant is mentioned as 29, age of the second claimant is mentioned as 26 and age of the third claimant is mentioned as 20 years. Since the age of the first claimant, who is the son of the deceased, is mentioned as 29 years, this Court is of the considered view that the age of the deceased mentioned in the claim petition as 48 has to be accepted and compensation has to be calculated on the basis of the age of the deceased as 48 years. Further, for the age of the deceased as 48, proper multiplier would be 13. The calculation in other respects fixing the income of the deceased at Rs.150 per day is accepted. Hence, the Loss of income/dependency due to the death of the deceased has to be calculated as follows:-
 $(Rs.150 \times 25 \times 12 \times 13 - 1/3) = Rs.3,90,000/-$.

8. Further, the Tribunal has awarded a sum of Rs.2,000/- under the head of funeral expenses, and a sum of Rs.30,000/- under the head of loss of love and affection to the claimants and the said amounts are confirmed. The Tribunal has not awarded any amount for transport expenses and hence, a sum of

Rs.3,000/- has to be awarded under the said head. Thus, the compensation awarded by the Tribunal is modified as follows:-

S1. Nos.	Heads	Amount awarded by the Tribunal	Amount granted by this Court
1.	Funeral Expenses	Rs. 2,000/-	Rs. 2,000/-
2.	Towards loss of income/dependency due to the death of the deceased	Rs. 4,80,000/-	Rs. 3,90,000/-
3.	Loss of love and affection of the claimants 1 to 3 (Rs.10,000/- each)	Rs. 30,000/-	Rs. 30,000/-
4.	Transport Expenses	Nil	Rs. 3,000/-
	Total	Rs. 5,12,000/-	Rs. 4,25,000/-

9. Hence, this Court is of the considered view that the respondents 1 to 3/claimants are entitled to a sum of Rs.4,25,000/- as compensation for the death of their mother.

10. In the result, the Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal is reduced to Rs.4,25,000/- from Rs.5,12,000/-. The interest awarded by the Tribunal at 9% per annum stands confirmed. There shall be no order as to costs.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

The II Additional District Judge,
Motor Accidents Claims Tribunal,
Pondicherry.

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