

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.11.2018
CORAM:
THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.240 of 2011

1.R.Lakshmi
2.A.Rajendran

... Appellants/Petitioners

..Vs..

1.M/s. DSC Motors Pvt Limited,
No.399, Anna Salai, Nandanam,
Chennai-600 035.
(1st Respondent remained ex-parte)

2.The New India Assurance Co. Ltd.,
No.45, Moore Street, 5th floor,
Chennai- 600 001. ...
Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment in MACT.O.P.No.4111 of 2005, dated 17.09.2010 on the file of the III Judge, Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

For Appellants : Mr.N.M.Muthurajan

For Respondents : R1-Exparte
Mr.M.Krishnamoorthy for R2

JUDGMENT

The appellants are the claimants in MCOP.No.4111 of 2005, dated 17.09.2010 on the file of the III Judge, Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

2.The appellants/claimants filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.6,00,000/- for the death of their child, R.Praveen Kumar aged about 7, in a road accident that took place on 29.07.2005.

3. The brief facts of the case of the appellants/claimants:-

On 29.07.2005 at about 17.00 hours, when the deceased was

walking along Anna Salai from his School, a speeding car bearing Registration No.TN-09-TC-161 hit the deceased, as a result of which, he sustained injuries and subsequently died on 01.08.2005 in the hospital.

4. According to the appellants/claimants, the rash and negligent driving of the driver of the car was the cause of the accident and that since, the said car was insured with the second respondent/The New India Assurance Company Limited, both are jointly and severally liable to pay the compensation of Rs.6,00,000/- to the claimants. The first respondent remained absent before the trial Court and was set exparte. The second respondent filed a counter denying all the allegations of the appellants/claimants.

5. The learned III Judge, Court of Small Causes (Motor Accidents Claims Tribunal) Chennai, after analysing the evidence on record, awarded a sum of Rs.2,70,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved over the quantum of compensation awarded by the tribunal, the appellants/claimants have filed the present appeal.

6. Mr.N.M.Muthurajan, the learned counsel appearing for the appellants contented that the child was aged about 7 years and as per the decision rendered in Kishan Gopal & another Vs. Lala & others reported in 2013 (2) TN MAC 358 (SC), a sum of Rs.4,74,000/- should be awarded for Loss of Pecuniary benefits and Loss of estate of the deceased and in total a compensation of Rs.6,00,000/- should be awarded to the appellants/claimants.

7. Per contra, the learned counsel for the respondents would contend that, in the decision cited above the Insurance Company dragged on the matter for more than 21 years, without paying any compensation amount and in such circumstances the Hon'ble Supreme Court awarded compensation by taking notional income of the deceased at Rs.15,000/-. He would further contend that the above decision would apply to the children between the age group of 10-16 years and since the present case, the deceased was aged about 7 years, the above dictum would not be applicable.

8. I do not find any difference between a child aged 7 years and 10 years and in the decision of Kishan Gopal & another Vs. Lala & others reported (cited supra), the Hon'ble Supreme Court awarded a compensation of Rs.5,00,000/-. Applying the same principles, a sum of Rs.5,00,000/- is awarded together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit.

9. Thus, the appellants/claimants are entitled to a sum of

Rs.5,00,000/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit. The second respondent is directed to deposit the said amount along with interest and costs, less the amount already deposited by them within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the appellants/claimants are at liberty to withdraw the entire amount as per the apportionment made by the Tribunal. The claimants shall pay additional Court fee, if any.

10. With the above observations, the Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dna

To

The III Judge, Small Causes Court,
(Motor Accidents Claims Tribunal) Chennai.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.N.M.Muthurajan, Advocate, Sr.No. 81177

+1 cc to M/s.M.Krishnamoorthy, Advocate, Sr.No. 81012

C.M.A.No.240 of 2011

SR(CO)
CSL/10.05.2019

सत्यमेव जयते

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