

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.11.2018
CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA
C.M.A.No.255 of 2011

1.Thilagavathy
2.Devaki
3.D.Thirugnanamoorthy
4.D.Jayakumar
5.Kalpana

...Appellants/ Petitioners

...Vs..

1.K.Thangadurai
(remained ex-parte before
the trial Court)

2.The National Insurance Co. Ltd.,
No.751, Anna Salai,
Chennai- 600 002.

...Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment in MCOP.No.994 of 2007, dated:19.08.2010 on the file of the, Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.N.M.Muthurajan

For Respondents : R1 - Exparte
Mr.R.Ravichandran for R2

JUDGMENT

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The appellants are the claimants in MCOP.No.994 of 2007 on the file of the Chief Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2. The appellants filed the above claim petition seeking for a compensation of Rs.3,00,000/- for the death of their father in a road accident that took place on 21.07.2006.

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

On 21.07.2006, the deceased was walking along Konnur High Road, Ayanavaram. When, he was nearing Classic Tailor shop, a speeding motor cycle bearing Registration No.TN-05-D-0892 hit the deceased as a result of which, he sustained injuries and he was immediately rushed to Madras Medical College Hospital. However, he succumbed to injuries on the same date.

4. According to the appellants/claimants, the deceased was aged 80 years and was a retired B and C Mills Employee. They have further contended that the rash and negligent driving of the driver of the first respondent was the cause of the accident and since, the first respondent had insured his vehicle with the second respondent National Insurance Company, both the respondents are jointly and severally liable to pay the compensation to the claimants. The first respondent remained absent before the trial Court. The second respondent filed a counter denying all the allegations of the appellants/claimants.

5. The trial Court, after analysing the evidence on record, awarded a compensation of Rs.70,000/- to the claimant together with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit.

6. Aggrieved over the quantum of compensation awarded by the tribunal, the appellants/claimants have filed the present appeal under Section 173 of Motor Vehicles Act.

7. Mr.N.M.Muthurajan, the learned counsel appearing for the appellants would contend that the trial Court did not consider that the deceased was a retired B and C Mills Employee and was receiving pension, even after retirement. He therefore contended that a sum of Rs.5,000/- should be fixed as income of the deceased. It is pertinent to point out that no proof was fixed to show that the deceased was receiving pension after his retirement. Therefore, considering the age of the deceased a sum of Rs.3,000/- is fixed as monthly income of the deceased and since the age of the deceased was 80 years, proper multiplier to be adopted in the instant case is 5 as per the decision rendered in Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Even though there are 5 claimants in the instant case, considering the nature of dependency, 1/3rd of the notional income has to be deducted towards personal expenses of the deceased and the loss of dependency is calculated as Rs.2,000/- X 12 X 5 = 1,20,000/-.

8. Apart from the above amount, the appellants/claimants are entitled to a sum of Rs.15,000/-, Rs.15,000/- and Rs.40,000/- towards loss of consortium,

loss of estate and funeral expenses. The details of the amount awarded to the appellants/claimants are as follows:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.1,20,000/-
2.	Loss of consortium	Rs.15,000/-
3.	Loss estate	Rs.15,000/-
4.	Funeral expenses	Rs.40,000/-
Total		Rs.1,90,000/-

9. Thus the appellants/claimants is entitled to a sum of Rs.1,90,000/- together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit. The The National Insurance Company Limited, namely, the second respondent is directed to deposit the enhanced claim amount, 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 same, as per the procedures and as per the apportionment made by the tribunal.

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

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dna
To

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

Copy to :

The section officer,
VR Section,

High court, Madras (2 Copies)

+1cc to Mr. R.Ravichandran, Advocate SR.No. 81892

+1cc to Mr.N.M.Muthurajan , Advocate SR.No. 81175

C.M.A.No.255 of 2011

A.SK(11/03/2019)