

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2735 of 2011

1. Muniammal
2. Poovarasi
3. Perumal
4. Saraswathi
5. Devaraj
6. Munisamy
7. Rojamani
8. Durai
9. Vijayakumar

... Appellants/Claimants

Vs.

1. K.Jayaraman
2. The National Insurance Company Limited,
Branch Office, Post Box No.23,
No.88-F, Bypass Road,
Dharmapuri

... Respondents/Respondents

For Appellants : Mr.M.Devaraj

For 2nd Respondent : Mrs.R.Srividhya

For first Respondent: No appearance

J U D G M E N T

The appellants are the claimants in M.C.O.P.No.619 of 2006 on the file of the Additional District Judge, Motor Vehicle Accident Claims Tribunal, Fast Track Court, Dharmapuri and they filed above claim petition seeking compensation of Rs.10,00,000/- for the death of one Periyannan, who died on 28.10.2003 in a road accident that took place on 04.10.2003.

3. The brief case of the claimants is as follows.

On 04.10.2003, the deceased Periyannan was walking on

the left hand side of the road near R.K.Hospital, Salem. At about 10.00 a.m. a two wheeler bearing registration No.TN-29-B-4041 TVS Susuki belonging to the first respondent hit the deceased Periyannan, as a result of which, he sustained injuries. Immediately, he was rushed to a nearby hospital. According to the claimants, the deceased Periyannan took treatment in a hospital at Salem from 04.10.2003 to 19.10.2004 and subsequently, died on 28.10.2003. It is further contended by them that his death was due to the proximate and immediate cause of the accident that took place on 04.10.2003 and that since the rider of the two wheeler bearing registration No.TN-29-B-4041 drove his vehicle rashly and negligently, the owner of the said two wheeler as well as the insurer namely the National Insurance company, Dharmapuri (2nd respondent) are jointly and severally liable to pay compensation to them.

4. The first respondent/ the owner of the two wheeler remained absent was set exparte in the trial court and the 2nd respondent filed a counter affidavit denying all the allegations of the claimants.

5. The learned Additional District Judge, Motor Accident Claims Tribunal, Dharmapuri, after analysing the evidence on record, awarded a compensation of Rs.1,58,045/- together with interest at the rate of 7.5% per annum to the claimants. However, the tribunal has held that the death of the deceased Periyannan was not due to the proximate cause of the accident since no postmortem was done on the body of the deceased. The tribunal therefore, awarded a compensation of Rs.1,58,054/- under various heads which are extracted hereunder.

S1 No	Heads	Amount in Rs.
1	For Grievous Injuries	Rs.40,000
2	Pain and sufferings	Rs.10,000
3	For mental agony	Rs.5,000
4	For Extra Nourishment	Rs.2,000
5	Loss of amenities	Rs.2,000
6	Transportation Expenses	Rs.2,000
7	Medical expenses (as per bills Ex.P6)	Rs.97,045/-
	Total	Rs.1,58,045/-

6. Mr.M.Devaraj, learned counsel appearing for the appellants/ claimants would contend that the deceased was aged about 70 years on the date of the accident and the discharge summary Ex.A6 issued by Vidhya Hospital, Salem would disclose that the deceased Periyannan had sustained grievous injuries. He would further contend that on 15.10.2003, a surgery was performed on him and he was found to have developed respiratory distress with irrelevant speech. Though he was discharged on 19.10.2003, subsequently, he was admitted in Sri Ramakrishna Hospital and died on 28.10.2003, as evidenced by the certificate Ex.A10 issued by Dr.R.Ramamoorthy attached to Sri Ramakrishna Hospital, Darmapuri. According to the learned counsel for the appellants, the death of Periyannan was due to proximate and immediate cause of the accident that took place on 04.10.2003 and that the trial court was wrong in awarding a sum of Rs.1,58,045/- , just for the injuries sustained by the deceased Periyannan

7. Per contra Mrs.Srividhya, learned counsel appearing for the 2nd respondent / insurance company would contend that the deceased was aged about 70 years on the date of the accident and no acceptable evidence was adduced on the side of the appellants to show that the death was due to proximate cause of the accident and that the trial court was right in awarding compensation for the injuries sustained by him.

8. A perusal of the orders passed by the tribunal shows that a compensation Rs.1,58,045/- was awarded to the claimants for the injuries sustained by he deceased Periyannan. It is surprising to note that while the claim petition was filed by the legal heirs of the deceased Periyannan, the tribunal has awarded a sum of Rs.40,000/- for the injuries sustained by the deceased periyannan and Rs.10,000/- towards pain and sufferings and Rs.5,000/- towards mental agony and Rs.2,000/- each towards Extra nourishment, Loss of amenities and Transportation charges, as if the original claim petition was filed by the deceased Periyannan.

9. The discharge summary Ex.A7 clearly shows that an operation was performed on 05.10.2003 and the surgery notes found in Ex.A7 is extracted hereunder.

" Under GA, # put on # table, # reduced and found satisfactory. About 10 cm long curved lateral incision made on right thigh. Skin and Fascia incised. Fascia lata incised. Vas-lateralis muscle retracted and # site exposed. Trochanter found grossly Comtd, # aligned and reduced. A guide wire passed through the trochanter and neck

with 135 * guide. Wire position found satisfactory. The trochanter and neck are remmed upto 70mm. 70mm DHS driven and 135* / 5H DHS plate introduced and fixed with shaft of femur by 4 cortical screws. # stabilisation found satisfactory. The screw and plate position found satisfactory and confirmed with 'C'arm. Wound washed with saline. Complete haemostasis obtained. Wound closed in layers with drain. Dressing done."

Though the deceased Periyannan was discharged on 09.10.2003, the contention of the appellants/claimants is that he was admitted in Intensive Care Unit of Sri Ramakrishna Hospital, Dharmapuri on 21.10.2003 and died on 28.10.2003 as evidenced by the certificate (Ex.A10) issued by Dr.R.Ramamoorthy, Sri Ramakrishna Hospital, Dharmapuri. The appellants/claimants had not examined Dr. R. Ramamoorthy, who issued Ex.A10. They have not also adduced the discharge summary issued by Sri Ramakrishna Hospital. In any event, the deceased Periyannan had sustained grievous injuries in the road accident and the discharge summary Ex.A7 also shows that when the deceased was in post operative ward, he was diagnosed of having Adult Respiratory Distress Syndrome with Hypoxic encephalopathy. The date of death of the deceased Periyannan is very vital and important. Since he died on 28.10.2003 and no other serious ailments were shown in the medical records, it can be easily presumed that the death was due to the proximate and immediate cause of the accident that took place on 04.10.2003. Merely because the postmortem has not been done on the body of the deceased, it cannot be contended that the deceased did not die on account of road accident. No contra evidence was adduced on the side of the insurance company and there is nothing to show that the deceased died naturally. Therefore, the award passed by the learned trial judge is liable to be set-aside.

10. As far as the quantum of compensation is concerned, the contention of the appellants is that the deceased was an agriculturist earning a sum of Rs.25,000/- per month. Since no documentary evidence was adduced to prove the income of the deceased, notional income is fixed at Rs.3,000/-, considering the date of accident. Though there are 9 claimants, all of them were majors on the date of accident. It is also pertinent to point out that the age of the deceased was 70 years on the date of accident. Therefore, 1/3 alone can be deducted towards personal expenses of the deceased. As per the decision in Sarla Verma and other Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the proper multiplier to be adopted in this case is '5'. Therefore, the loss of dependency is calculated as follows.

Calculation.

Notional Income = 3,000
minus 1/3 towards Personal Expenses = 2,000
Loss of dependency (2000 x 5 x 12) = 1,20,000

Apart from this, the claimants are entitled to Rs.40,000/- towards "Loss of consortium" and Rs.15,000/- each towards " loss of estate" and "Funeral Expenses ". To this amount a sum of Rs.97,045/- is added for medical bills as per Ex.A6. Therefore, the total compensation is revised as Rs.2,87,045/-. The following is the tabular column which would show the enhanced award under various heads.

S1 No	Heads	Amount in Rs.
1	Loss of dependency	1,20,000
2	Loss of consortium	40,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000
5	Medical bills	97,045
6	Tota	2,87,045

The afore said amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. It is brought to the notice of this court that the entire award amount of Rs.1,58,045/- had already been deposited by the Insurance Company. Considering the age of the other claimants 2 to 9, the first claimant Muniammal, widow of the deceased Periyannan is entitled to withdraw the balance amount of the enhanced compensation of Rs.1,29,000/- with interest at the rate of 7.5% per annum.

12. In the result,

(i) The appeal is allowed in part and a sum of Rs.2,87,045/- is awarded as compensation 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.

(ii) The 2nd respondent is directed to deposit the said amount along with interest, less the amount already deposited, within a period of four weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the 2nd respondent, the first petitioner (Muniammal) is at liberty to withdraw the balance amount of the enhanced compensation of Rs.1,29,000/- together with interest, after following due process of law.

(iv) No order as to costs.

mst

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Additional District Judge,
Motor Vehicle Accident Claims Tribunal,
Fast Track Court,
Dharmapuri.

Copy to

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.M.Devaraj, Advocate, S.R.No.85920
+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.87039

CMA No.2735 of 2011

RSV(CO)
KAK(21/02/2019)

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