

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.1789 of 2013

1.Subramani
2.Palanisamy
3.Sellammal
4.Suseela
5.Nalligounder

.. Appellants/Petitioners

vs.

1.K.P.Murugesan

2.M/s.National Insurance Co. Ltd.,
Namakkal, 74-A, Paramathi main road,
Namakkal Town & District.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.01.2005 in M.C.O.P.No.711 of 2004 on the file of Motor Accident Claims Tribunal, Principal District and Sessions Court, Namakkal.

For Appellants : Mr.M.Ravi

For respondents : Mr.K.Padmanabhan for R2
R1 - exparte

J U D G M E N T

The appellants are the claimants in MCOP.No.711 of 2004 on the file of the Motor Accident Claims Tribunal / Principal District and Sessions Court, Namakkal. They filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 praying to award compensation of Rs.4,00,000/- for the death of Pappayi, mother of appellants 1 to 4 and wife of the fifth appellant in a road accident that took place on 21.06.2000.

2. The case of the appellants is that on 21.06.2000, at about 10.00 pm, the deceased was walking along Namakkal - Trichy main road, near Annapoorna Hotel. At that time, an auto rickshaw bearing Registration No. TN 28 E 5924 came in a rash and negligent manner and hit her, as a result of which, she

sustained fatal injuries. Immediately, she was taken to Government Hospital, Namakkal and again, on 07.07.2000, she was taken to a Private Hospital for further treatment. However, she succumbed to injuries on 18.07.2000. The contention of the appellants / claimants is that the accident took place due to the rash and negligent driving of the driver of the said auto rickshaw. Therefore, they filed claim petition seeking compensation.

3. Before the Tribunal, on the side of the appellants / claimants, PW1 was examined and Exs.P1 to P7 were marked. On the side of the respondents, no documentary or oral evidence was marked.

4. The respondents remained absent before the Tribunal and therefore, they were set exparte. The learned Principal and Sessions Judge, Namakkal vide decree and Judgment dated 25.01.2005, awarded compensation of Rs.20,000/- together with interest at the rate of 9% per annum to the claimants.

5. Challenging the said award dated 25.01.2005 in M.C.O.P.No.711 of 2004, the appellant / claimants have come out with the present appeal.

6. The learned counsel for the appellants would submit that, after the accident, the deceased Pappayi took treatment in Hospital from 21.06.2000 to 18.07.2000 and when that being the case, the Tribunal ought to have awarded a higher compensation towards medical expenses. The learned counsel would further submit that the Tribunal without considering the loss occurred to the family due to the sudden demise of an elder person, awarded a very meagre compensation. He would also submit that though the appellants 2 to 4 are married, they were under the care and guidance of their mother and therefore, having lost their mother, they are also entitled to get compensation. He therefore, prayed for enhancement of compensation and awarding compensation to all the appellants.

7. The learned counsel appearing for the second respondent submitted that the Tribunal after considering both oral and documentary evidences in a proper perspective, awarded compensation, which is not meagre. The appellant / claimant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8. From the claim petition, it is seen that the deceased was aged 57 years and was earning a sum of Rs.1,000/- per month. However, no proof was adduced to prove the age and income. The Tribunal after analysing the evidences on record, fixed the aged of the deceased as 60 years, based on the age of the third appellant. The Tribunal also based on the details given in

First Information Report (Ex.P1) came to a conclusion that the deceased was not an earning member of the family. The appellant 1 to 4 are sons and daughters of the deceased and the fifth appellant is the husband of the deceased. Since on the date of the accident, the deceased was living in the house of the first appellant, the Tribunal came to the conclusion that only the first and fifth appellants are eligible to get compensation. The above conclusions of the Tribunal are reasonable and needs no interference. Further, no evidence for medical expenses were adduced on the side of the appellants. Considering the facts and circumstances and the age of the deceased, the Tribunal awarded a sum of Rs.20,000/- together with interest at the rate of 9% per annum to the first and fifth appellants. This Court is also of the opinion that the sum awarded by the Tribunal is just and reasonable. Hence, the award passed by the Tribunal is hereby confirmed.

9. In the result, this Civil Miscellaneous Appeal is dismissed. The first and second respondents are directed to deposit the award passed by the Tribunal jointly and severally along with interest and costs, less the amount already deposited if any, to the credit of MCOP.No.711 of 2004 on the file of the Motor Accident Claims Tribunal, Principal District and Sessions Court, Namakkal within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the first and fifth appellants are permitted to withdraw the award amount as apportioned by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Principal District and Sessions Court,
Namakkal

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

CMA.No.1789 of 2013

CNR (CO)
GMY (06/05/2021)