

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2859 of 2016

1.Jayabal
2.Kasinathan
3.Jothi Prakasam

.. Appellants/Petitioners

Vs.

1.Dhakshinamurthi
2.Kaliyamurthy
3.The Divisional Manager,
United India Insurance,
Panruti Branch.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.01.2016 made in M.C.O.P.No.75 of 2004 on the file of Motor Accidents Claims Tribunal (II Additional District Court, Chidambaram).

For Appellants : Mr.A.Murugan

For Respondents: M/s.R.Sreevidhya
[For R3]

No Appearance
[For R1 & R2]

JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 28.01.2016 passed in M.C.O.P. No. 75 of 2004 seeking enhancement of compensation.

2. One Mr. Kuppan met with an accident and died. He was 73 years old at the time of accident and his legal heirs filed the claim petition seeking compensation. The Tribunal granted a compensation of Rs. 1,80,000/-.

3. The learned counsel appearing on behalf of the appellants/claimants mainly contended that the amount of compensation awarded is inadequate, in view of the fact that

the deceased, who was aged about 73 at the time of accident, was earning member and therefore, his income is to be fixed for the purpose of calculating the compensation. He was an agricultural coolie and therefore, some income is to be fixed for the purpose of calculating the compensation.

4. The learned counsel appearing for the third respondent /insurance company disputed the contention by stating that the claimants are not produced any proof to establish that the deceased was an earning member . In view of the absence of any proof, considering the age of the deceased was 73 at the time of accident, the Tribunal fixed the compensation for love and affection, ambulance and funeral expenses.

5. In normal circumstances, no income can be fixed with reference to a person at the age of 73 years. However, the age alone cannot be the criteria, as in some cases, even at the age of 73 the people are having earning capacity. In those circumstances, it is for the claimants to establish that the deceased was the earning member and in this regard, some documents are to be filed. Under these circumstances, the Tribunal arrived a conclusion that the claimants have not produced any document to establish the income of the deceased and therefore, the compensation of Rs.1,80,000/- was awarded.

6. This Court is of the opinion that the age alone is not the point to determine whether a person is earning member or not, as irrespective of the age the persons may have earning capacity. However, it is for the claimants to establish that the deceased was earning and contributing to the family. In the absence of any proof to establish the same, Court has presumed that at the age of 73 normally it is not possible to earn. An inference was drawn in this regard by the Tribunal, in view of the fact that the claimants are not submitted any documents to establish the income of the deceased.

7. This Court is of the considered opinion that at least a notional income or a fixed compensation towards loss of income would have granted by the Tribunal. In this case, no such compensation was granted. This being the factum, this Court is inclined to grant another 50,000 towards loss of income. This apart, the Tribunal has granted a sum of Rs.1,50,000/- towards love and affection. The claimants, namely, the legal heirs of deceased was aged about 53 years at the time of filing the claim petition, therefore, the compensation granted under the head of love and affection itself is adequate.

8. Under these circumstances, this Court is inclined to enhance the total compensation from 1,80,000/- to 2,30,000/-. The third respondent /insurance company is directed to deposit the entire award amount along with interest @ 7.5% per annum, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the appellants/claimants shall be permitted to withdraw the said amount by filing an appropriate application and the payments are to be made only through RTGS. The appellants/claimants are liable to pay court fee for the enhanced compensation amount.

9. With this modification, the judgment and decree dated 28.01.2016 passed in M.C.O.P. No. 75 of 2014 is set aside and this Civil Miscellaneous Appeal stands partly allowed. No costs. The pay and recovery order has already been passed by the Tribunal to recover the compensation from the owner of the vehicle. The said order of pay and recovery stands confirmed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Maya
To

1.The II Additional District Judge
Motor Accidents Claims Tribunal
Chidambaram

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

+1 CC to Mr.A.Murugan, Advocate sr 23355
+1 Cc to Ms.R. Sreevidya, Advocate sr 24040.

C.M.A.No.2859 of 2016

RJI (CO)
SP(05/11/2020)