



A.S.No.506 of 2021

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

A.S.No.506 of 2021

1. Mohamed Naina Maraicar

2. Jainambu Gani

... Appellants/Plaintiffs

Vs.

1. The Chief Secretary,
Chief Secretariat,
Government of Puducherry,
Puducherry Town and District Munsif.

2. The Director of Education,
Directorate of Education,
Government of Puducherry,
Puducherry Town and District Munsif.

3. The Principal,
Avvaiyar Government College for Women,
Karaikal.

4. Union of India,
Represented by Chief Secretary,
Government of Puducherry,
Puducherry.

Respondents/Defendants

...

PRAYER: First Appeal filed under Section 96 r/w Order 41 Rule 1 of Civil Procedure Code, pleased to enhance the amount awarded in O.S.No.11 of 2015



A.S.No.506 of 2021

dated 24.10.2019 on the file of the District Court, Karaikal, as prayed for with interest and cost.

For Petitioners : Mr.K.Varadha Kamaraj
For Respondents : Mr.V.Vasanthakumar,
Additional Government Pleader (Puducherry)
for R1 to R4

JUDGMENT

Challenging the Judgment and Decree passed by the District Court in O.S.No.11 of 2015 dated 24.10.2019, the plaintiffs have filed this appeal suit seeking enhancement of compensation.

2. The case of the plaintiffs is under :-

(a) The plaintiffs are the parents of one Mahboob Nisha/victim, aged about 18 years, who was studying 1st year of B.Sc., Home Science in Avvaiyar Government College for Women, Karaikal. The victim/deceased was the only daughter of the plaintiffs and they have showered all the affection and love and spent huge money and affluence for the welfare of their only daughter. In the above said college, there had been repeated complaints about the disturbance by stray monkeys inside the college, which were from the area around the college



A.S.No.506 of 2021

premises and also, there had been repeated demands from both students and public to fence the building portion to avoid the trespass of dangerous animals and also for the safety of students and staff. While so, on 14.10.2011, the victim/deceased had gone to the College at about 8.45 am., and when she was waiting near her classroom, which is situated in the second floor of the college, she was chased by a ferocious monkey, during which, she unfortunately, fell down from the 2nd floor of the college building and sustained serious head injuries and fracture and died on the same day at 9.05 a.m.

(b) On the complaint given by the second plaintiff, the case in Crime No.321 of 2011 was registered and the same is still pending. Finding fault with the respondent college that the death of their daughter was on account of the negligence of the college, the plaintiffs have filed a suit seeking for a compensation of Rs.6 lakhs along with interest at 12% from the date of the plaint till the date of payment to the plaintiffs.

3. The third defendant/third respondent had filed the written statement and the same was adopted by the other defendants. The defendants had claimed that the victim had fallen down from the second floor due to her negligent act and



A.S.No.506 of 2021

that she alone was responsible and liable for her death. Though the defendants had admitted that the death of the victim was due to her fall from the second floor of the college, they have contended that it was not on account of their negligence, and that she had fallen down while sitting on the parapet wall and talking in her mobile phone and thereby, the victim girl alone was responsible for her fall and sustaining injuries. It is the further case of the respondents that the plaintiffs have been awarded with an amount of Rs.2 lakhs as compensation from the Chief Minister Relief Fund disbursed by the District Administration at Karaikal and they have filed the suit claiming compensation for the second time against the defendants and thereby, the suit is liable to be dismissed as it has no merits for getting compensation once again for the same cause.

4. On the above pleadings, the Trial Court framed the following issues:-

1. Whether the death of the deceased Mehboob Nisha on 14.10.2011 was due to the negligence on the part of the defendants?
2. Whether the plaintiffs are entitled to be compensated by defendants?
3. Whether the plaintiffs are entitled for a decree for Rs.6,00,000/- with subsequent interest at 12% p.a. on the said amount from the date of plaint till realization with cost ?



A.S.No.506 of 2021

WEB COPY

5. Before the Trial Court, the second plaintiff examined herself as PW1 and she had marked exhibits Ex.A1 to Ex.A8 in support of the case. On the side of the defendants, Dr.W.V.Balaji, Principal of the said College was examined as DW1.

6. On perusal of the evidence, the trial Court found that the death of the victim was due to the negligence of the college authorities and held that the plaintiffs are entitled for compensation. In respect of issue No.1, the trial Court found that the victim died only due to the negligence on the part of the defendants and the defendants are liable for the death of the victim. In respect of issue No.2, the trial Court found that the plaintiffs/parents of the victim are entitled for compensation and in respect of issue No.3, the trial Court found that PW1 had admitted that she had received a sum of Rs.1 lakh as compensation from the Chief Minister Relief Fund from the District Administration at Karaikal and considering the same, the trial Court has held that the plaintiffs are entitled to a sum of Rs.5 lakhs towards compensation less the amount already paid by the Government from the Chief Minister Relief Fund and had also fixed the interest as 7.5% on the compensation from the date of plaint till the date of realization of the amount.



A.S.No.506 of 2021

Seeking enhancement of the compensation amount, the present appeal has been filed.

7. Learned counsel for the appellants submitted that it is the case of death of a college student within the college premises and that the trial Court having found that the death was on account of the negligence of the college administration, ought to have awarded compensation as per the formula stipulated in the Motor Vehicles Act, whereas, the trial Court had erred in awarding a lesser compensation and thereby, he would seek to allow the appeal and enhance the amount of compensation awarded by the trial Court.

8. Per contra, Mr.Vasanthkumar, the learned Additional Government Pleader (Puducherry) appearing for respondents 1 to 4, while admitting the fact that no appeal has been preferred by the Government against the judgment and decree passed by the trial Court, submitted that the plaintiffs themselves have restricted their claim only to Rs.6 lakhs and the trial Court had decreed the amount in full after deducting the amount of Rs.1 lakh which was already paid by the Government from the Chief Minister Relief Fund. Having claimed an amount of Rs.6 lakhs before the trial Court, the appeal seeking for enhancement of



A.S.No.506 of 2021

compensation amount is not maintainable and thereby, he seeks for dismissal of the appeal by confirming the order passed by the trial Court.

9. Heard the learned counsel appearing for the appellants, the learned Additional Government Pleader (Puducherry) appearing for respondents 1 to 4 and perused the records including decree and judgment of the Court below.

10. The points for consideration in this appeal is that whether the appeal has to be allowed and whether the amount of compensation has to be enhanced in accordance with the formula stipulated under the Motor Vehicles Act.

11. It is the case of the death of a college student within the college premises. The claim of the plaintiffs is that there was disturbance by stray monkeys inside the college premises and since the victim was chased by a stray monkey, she had fallen from the second floor of the college and died within the premises of the college. Before the trial Court, on the side of the plaintiffs, the second plaintiff examined herself as PW1 and marked exhibits Ex.A1 to Ex.A8 in support of her case.



A.S.No.506 of 2021

12. The trial Court, finding that the death of the victim was on account of the negligence on the respondents, had fixed the responsibility on the respondent. However, the trial Court, taking into consideration that the plaintiffs themselves have restricted their claim to 6 lakhs and further finding that a sum of Rs.1 lakh was already paid by the respondents under the Chief Minister Relief Fund by the District Administration, had allowed the claim of the plaintiffs in full and passed the decree for a sum of Rs.5 lakhs deducting the amount already received by the plaintiffs from the Government, along with 7.5% interest.

13. This Court does not find any infirmity in the order passed by the trial Court. When the plaintiffs themselves have restricted their claim to Rs.6 lakhs, the appeal suit seeking enhancement of compensation does not deserve any merit and thereby, is liable to be dismissed.

14. Accordingly, the Appeal Suit stands dismissed. No costs.

14.07.2023

ham

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No



A.S.No.506 of 2021

WEB COPY

To

1. The District Court, Karaikal
2. The Section Officer, VR Section, High Court of Madras



WEB COPY



A.S.No.506 of 2021

A.D.JAGADISH CHANDIRA.,J.

ham

A.S.No.506 of 2021

14.07.2023