

(1999) 10 MAD CK 0033

In the Madras High Court

Case No : C.M.A. No. 815 of 1999 and C.M.P. No. 9816 of 1999

The District Collector, Pudukottai, and another

APPELLANT

Vs

Smt. Neela Bai and two others

RESPONDENT

Date of Decision : 26-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Motor Vehicles Act, 1988 — Section 168, 173

Citation : (2001) ACJ 1636 : (2000) 1 CTC 10 : (2000) 1 LLJ 1362 : (2000) 1 MLJ 526

Hon'ble Judges : R. Jayasimha Babu, J;I. David Christian, J

Bench : Division Bench

Advocate : Mrs. Titus Jesudoss, for the Appellant; Mr. M. Baskar, for the Respondent

Final Decision : Dismissed

Judgement

Judgment pronounced by R. Jayasimha Babu, J.—The Government has come up with this appeal against the award of the tribunal by which

a sum of Rs.3,53,400 has been awarded as compensation to the claimants who are the widow and children of the deceased being an employee of

the Government and who was travelling in the jeep which was driven by the employee of the Government, that jeep having met with an accident on

31.1.1994. The deceased Anandaraj died as a consequence. The claimants before the tribunal were the widow and children of the deceased

AnandaraJ.

2. The tribunal has awarded compensation of Rs.3,53,400 which, in our opinion is very conservative award. Admittedly, the deceased had been

employed as an Assistant in the Forest Department and was drawing a salary of Rs.3685 on the date of the accident i.e., on 31.1.1994. The

report of the pay commission has been published and it has recommended for the said post salary of about of Rs.5000. At the time of the accident,

the pay commission which had been constituted by the Government was engaged in the task of revising the pay scale and for the post of Assistant,

the scale of pay was later revised to about Rs.5000 per month.

3. Taking into account the salary of the deceased would have earned over a period of time as also the prospects of higher salary by reason of

prospective promotion, it can be safely said that his income would have been not less than Rs.5,000 per month for the remaining period of service.

The age of the deceased was given as 47 years by the claimants. Respondents did not choose to adduce any evidence to contradict it. The tribunal

has however adopted the age of the deceased at 52 by relying upon the postmortem certificate. We do not approve such method of determining

the age especially when the respondents which had custody of the records pertaining to its employee, had failed to produce the same. There was

no reason to depart from the evidence that has been given by the claimants that the age of the deceased was 47 years.

4. Had the deceased continued to live, he would have 11 years of service before retirement during which period he would have earned not less

than Rs.5000 per month. After deducting the extent of dependency would be Rs.40,000 per annum. If this sum is multiplied by 12, it would yield a

sum of Rs.4,40,000. The claimants are entitled conventionally to a sum of Rs.30,000 towards as loss of consortium and loss of estate Rs.15,000

insurmountable .Thus the total amount comes to Rs.4,70,000. The tribunal has granted only the sum of Rs.3,53,400 as against the sum of

Rs.4,70,000 to which sum the claimants are entitled.

5. Even though the claimants have not preferred an appeal or filed any cross-objection, we do not regard that as an insurmountable hurdle coming

in the way of award of a larger sum We find that the award of larger sum was justified. In this case as we have noticed earlier, the claimants are

entitled to the award of Rs.4,70,000 on the basis of the evidence placed before the court. The claimants shall pay additional court fee on the

amount in excess of the amount determined by the tribunal namely the difference between Rs.4,70,000 and Rs.3,53,400. The claimants are also

entitled to interest at 12% on the amount awarded as now enhanced by us from

the date of the claim till date of payment. Consequently, WMP is closed.