



C.M.A.No.1750 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.08.2023

Pronounced on : 22.08.2023

CORAM

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN
and

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.M.A.No.1750 of 2021

and

C.M.P.No.9288 of 2021

M/s.United India Insurance Company Limited,
having its Divisional Office at
No.266, Kapila Towers,
Opposite to Sai Baba Temple,
Mettupalayam Road,
Coimbatore - 641 043.

...Appellant/3rd Respondent

Vs.

K.R. Murugesan (died)
1.Shindhamani
2.Minor M.Balashiranjeevi
3.Minor M.Viyaskumar
4.Saraswathi
5.T.Muthusamy
6.R.Raguvaran

...Respondents 1 to 4/Petitioners
...5th Respondent/1st Respondent
...6th Respondent/2nd Respondent



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Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 10.01.2020 in M.C.O.P.No.202 of 2016 on the file of the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Erode.

For Appellant : Mr.S.Arunkumar
For Respondents : Mr.Amar D. Pandya
for Mr.M.Mohamed Riyaz
for R1 to R3
R4 - Deceased
R5 and R6 - Notice dispensed
with vide order of this Court
dated 01.12.2022

JUDGMENT

(Judgment of the Court was delivered by V. LAKSHMINARAYANAN, J.)

This Civil Miscellaneous Appeal arises against the Judgment and Decree of the learned Special Subordinate Judge, Motor Accidents Claims Tribunal at Erode. The Tribunal decreed M.C.O.P.No.202 of 2016 for Rs.23,31,000/- together with interest @ 7.5% from the date of petition.



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2.One K.R.Murugesan initiated M.C.O.P.No.202 of 2016. He was a 40 year old. He was employed as a heavy vehicle driver. He claimed that he was earning Rs.25,000/- per month. On 28.02.2016 at around 03.00p.m., he was riding his motor cycle bearing Registration No.TN 38 4069 near PSC School on Thondamuthur Road. At that time, a car bearing Registration No.TN 37 BA 2577 which was being driven by one Muthusamy drove from the opposite direction and attempted to overtake a preceding vehicle. Thereby, it came onto the wrong side of the road and collided with Murugesan's vehicle. This resulted in the petitioner suffering multiple bone fractures, head injury and grievous injuries.

3.He took treatment at the Coimbatore Medical College Hospital at Coimbatore and then shifted to Muthu's Hospital at Coimbatore. He took treatment for a month as an inpatient and



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thereafter, as outpatient.

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4.The vehicle which was driven by Muthusamy, the 1st respondent, was owned by the 2nd respondent Mr.R.Raguvaran. It was insured with the United India Insurance Company Limited, the 3rd respondent to M.C.O.P.No.202 of 2016 and the appellant herein. The parties are referred to as per their rank in the MCOP.

5.Pending the proceeding, Murugesan died on 03.09.2016. Therefore, his legal representatives were brought on record as petitioners 2 to 5. The 2nd petitioner is his wife. The 3rd and 4th petitioners are his sons and the 5th petitioner Saraswathi, is the mother of the deceased Murugesan. The mother, Saraswathi passed away pending the appeal, on 20.01.2020.

6.Before the Tribunal, four witnesses were examined on the



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side of the petitioners and as many as 25 documents were filed.

On the side of the respondents, neither documents nor any evidence were tendered.

7.The entire case turns on the evidence of PW2 – Dr.Deepak. He is the Doctor who had treated the deceased Murugesan. After going through the records in detail, the Tribunal had granted a compensation of Rs.23,31,000/- to be apportioned in the following rates:

<u>Particulars</u>	<u>Amount</u> (in rupees)
2 nd petitioner	13,53,500.00
3 rd petitioner	3,86,000.00
4 th petitioner	3,86,000.00
5 th petitioner	2,05,500.00
Total	23,31,000.00

8.It was the argument of the Insurance Company, that they



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were permitted to take all the defences open to them under Law, since the driver and the owner of the offending vehicle were set *ex parte* that the death of the deceased was not attributable to the accident and therefore, the Insurance Company is not liable to pay the legal representatives for the death.

9.The learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Erode, framed four issues for consideration, namely,

“(1)Whether the accident occurred due to the rash and negligent act of the 1st respondent?

(2)Whether the 1st petitioner died due to the accident?

(3)Whether the respondents are liable to pay compensation to the petitioners?

and

(4)Whether the petitioners 2 to 5 are entitled for compensation, if any, and if so, what is the quantum?”



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10. In order to prove the first issue, one Selvaraj was examined as PW3. He had specifically deposed as follows:

“fle;j 28.02.2016k; njjpad;W ntlg;gl;oapy; vdJ
ntiyia Koj;Jtpl;L kjpak; 03.00 kzp RkhUf;F ntlg;gl;o
g!;epWj;jk; mUnf cs;s gpv!;\$p gs;sp vjpnu cs;s
Of;filapy; O Foj;Jf;bfhz;oUe;njd;. mg;bghGJ KUnfrd;
vd;gth; nkhl;lhh; irf;fps; gjpt[vz;.ovd; 38 4069y;
tPunfusk; - bjhz;lhKj;J}h; nuhl;oy; fpHf;fpypUe;J
nkw;F neh;fp rhiyapd; ,lJg[w Xukhd bjd;g[w Xukhf
kpft[k; kpjkhd ntfj;jpy; rhiy tpjpfis mDrhpj;J Xl;o
te;Jbfhz;oUe;jhh;. ,t;thW mth; ehd; epd;Wbfhz;oUe;j
,lk; mUnf te;jnghJ mtUf;F vjph;jpirapypUe;J te;j fhh;
gjpt[vz;.o.vd;.37gpV 2577l Xl;o te;j mjd; Xl;Leh;
mjpntfkhft[k; m\$hf;fpuijahft[k;/ ftdf;Fiwthft[k; rhiy
tpjpfis gpd;gw;whkYk;/ jdf;F Kd;dhy; brd;w xU



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ngUe;ij Ke;jpr;bry;tjw;fhf nuhl;od; tyJg[wkhf (wrong
side) Vwp Xl;ote;J Kunfrd; Xl;or; brd;w nkhl;lhh;
irf;fspd; kPJ nkhip nk;go tpgj;ij Vw;gLj;jptpl;lhh;.”

11.PW3 was cross examined by the Insurance Company and
he had stated as follows:

“ehd; O Foj;Jf; bfhz;oUf;Fk;nghJ jpObud rj;jk;
nfl;L rhiya ghh;j;njd; vd;W brhd;dhh; rhpay;y. ehd;
rhiya ghh;j;Jf;bfhz;nl O Foj;Jf;bfhz;oUe;njd;.
mg;nghJ tpgj;J ele;jij ghh;j;njd;. tpgj;J ele;j rhiy
fpHnky; rhiy. tpgj;J rk;ge;jkhf ehd; g[fhh; vJt[k;
bfhLf;ftpy;iy. nghyPrhh; vd;id tprhhpj;jhh;fs;. Mdhy;
ifbahg;gk; th';ftpy;iy.”



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12.A plain reading of the evidence shows that, it is the categorical case of PW3 that the accident occurred only due to the rash and negligent manner of the driving by the 1st respondent. It was sought to be argued that since the accident had taken place in the middle of the road, the Court can presume that it was the deceased Murugesan who had contributed to the accident. In order to prove the case, PW4, Sub Inspector of Police of Vadavalli Police Station - jurisdictional Police Station was examined. It was he who prepared Ex.P.3 - Plan. He had categorically stated that the accident did not take place in the centre of the road but away from it.

13.Apart from that, the Final Report filed by him under Ex.P.24 dated 28.02.2016 and Ex.P.25 - Order of the learned Judicial Magistrate at Coimbatore dated 20.02.2017, would prove that negligence is attributable to Muthusamy, the driver of the offending vehicle. Therefore, the Tribunal came to the right



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conclusion that it was Muthusamy who was responsible for the accident.

14. One thing which looms large in this case is the absence of the evidence on the side of the Insurance Company. If the Insurance Company wanted to show that it was the deceased Murugesan who was responsible for the accident, it could have done so by letting in some evidence. On the contrary, it remained silent and did not even lift a little finger to rebut the evidence of PW1, PW2 and PW4. Therefore, the finding of the Tribunal that the first respondent before it, was responsible for the accident cannot said to be arbitrary or capricious. The same is confirmed.

15. The narration of the facts set forth above would show that the accident had occurred on 28.02.2016 and the original



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petitioner Murugesan passed away on 03.09.2016. It was argued by Mr.Arunkumar that since there is a gap between the date of the accident and the date of death, the Court should have come to the conclusion that the death of Murugesan is not attributable to the accident but due to other causes.

16.This issue was taken by the learned Tribunal and it had relied upon the evidence of PW2. The evidence of PW2 would show that the petitioner had been an inpatient for a month and thereafter, had been taken treatment as an outpatient in the Hospital, till August 2016. The Court below came to the conclusion that there is a possibility that the deceased original petitioner died due to the accidental injuries which had resulted in pulmonary embolism. *As per Oxford Concise Medical Dictionary pulmonary embolism means obstruction of the pulmonary artery or one of its branches by an embolus, usually a blood clot derived from phlebothrombosis of the leg veins (deep vein thrombosis).* Large



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pulmonary emboli result in acute heart failure or sudden death.

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Smaller emboli cause death of sections of lung tissue, pleurisy, and haemoptysis (coughing of blood). Minor pulmonary emboli respond to the anticoagulant drugs heparin and war-farin. Major pulmonary embolism is treated by embolectomy or by dissolution of the blood clot with an infusion of streptokinase. Recurrent pulmonary embolism may result in pulmonary hypertension. The Tribunal concluded that the death is caused due to the injuries suffered during the accident.

Let us now see the case sheet/treatment sheet of the deceased.

Name :Murugesan Age: 40/M Date: 28.03.2016
28 days follow up

DOS: 01.03.2016

Head injury with pneumocephalus

Right shaft of femur segmental comminuted fracture

great toe degloving injury with exposed bone

- Bifrontal craniotomy with anterior cranial fossa repair with pericranial graft

debridement and approximation of tissues

BP: 130/80mm/Hg

28.03.2016

C/O.mild headache

conscious oriented

Afebrile Fever

moving U/l, LL edema +



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Bp 130/80mm/HG

Review after 15 days

Adv.

T.Eption 100mg 1-1-1

T.Gabapenpln 0-0-1 (15 days)

C/O.head ache

Bp 160/80mm/Hg

Right femur – AP – Satisfactory

-LAT

Adv.

T Zerodol P 1-0-0

T Raabeprazole 1-0-0

T. Zolpidem 0-0-1

MWB knee being exercise

2 months 15 days follow up

1 month 18 days

Complaints of swelling left elbow

for the past 10 days

x-ray cervical – Lateral

Spine

right elbow – AP

- Lateral

right femur – AP

- Lateral

Advised

Olecranon pursitis – aspiration elbow

- 50% WB

- knee pending exercise

- strengthening

complaints of head ache no fever no CSF leak

alcohol intake +

CVS – s1-S2



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RS – BAE +

P/A Soft

Advise

T. eptoin -100 mcg 1-1-1

T. gabanteb – 300 mg 0-0-1

Autrip 10mcg 0-0-1

capsule renerve pulse 1-0-0 - one month

Plus Zerodol P20

Artho drugs 4 ½ months

complaints of pain

not properly mobilized

RS – B/L crepts +

physiotherapy 50% weight bearing with walking
foot exercises

contact immediately after breathlessness

breathlessness difficulty occurs

T.Leroflox – 500 mg – 1-0-0

complaints of breathlessness

SPO2 90% in room air

PR 100 per minute

110/70 mm/Hg RS bilateral

AE + crepts +

query pulmonary embolism

Admit in ICU. Patient not willing

17.A reading of Ex.P.12 would show that the petitioner was
rushed to Muthu's Hospital at Trauma and Care Joint



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Replacement Centre in Coimbatore. He was admitted to the hospital on 29.02.2016 and underwent surgery on 01.03.2016 and was discharged on 22.03.2016. He was examined by a Team of Doctors including a neurosurgeon Dr.Balamurugan. The diagnosis that the Doctors found out were as follows:

- (i)head injury with pneumocephalus
(pneumocephalus means air in the cavity of the cranial)*
- (ii)right shaft of femur segmental comminuted
fracture and*
- (iii)right great toe degloving injury with exposed
bone.*

For these injuries the following treatments were given:

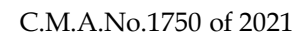
- (i)byfrontal craniotomy with anterior cranial frssa repair
with pericrinial graft*
- (ii)right femur intramedullary hailing*
- (iii)great toe debridement and approximation of tissues.*

18.The patient was discharged as seen from the summary after 30 days. He was directed to go for regular observations which he did so without any default till 19.08.2016. In order to appreciate the fact that the petitioner had promptly followed up



with the Doctors towards the cure, but which unfortunately resulted in death, we are extracting Ex.P.14.

[illegible]

[illegible]



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19.A detailed study of the medical records would show that the petitioner, not only suffered from severe pain at the time of walking and that too with support of a walker, the persistent issue that he faced was “breathlessness”. In fact, on the last date of the checkup, it was suspected that he was suffering from pulmonary embolism and was directed to admit himself in the ICU. It is on evidence that the petitioner was not able to afford the medical treatment and therefore was not willing to admit in the ICU.



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20.Mr.Arunkumar would argue that pulmonary embolism should occur within three days to one week of the accident and it is not possible for pulmonary embolism to have taken place few months after the accident. Pulmonary embolism, as seen above, is a blood clot in the artery which is connected to the lungs. This would lead to breathlessness which the petitioner had been complaining for over a month.

21.The Doctor who was examined as PW2 was extensively cross examined by the appellant. In his evidence, the Doctor would depose that the deceased Murugesan after discharge had taken treatment as an outpatient as many as six times in the same hospital. The Doctor had categorically stated from the records that when the deceased Murugesan had come to the hospital on 19.8.2016 for check up, he was suffering from acute breathlessness. He had stated that it is possible that due to the



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injury suffered in the accident, it could have resulted in pulmonary embolism which resulted in the death of the petitioner. It is pertinent to note that he was not declared dead in Muthu's Hospital but at another clinic called "Patteswara Hospital".

22.We have perused the evidence of PW2 in detail. PW2 has stated that it is possible to clinically diagnose if a person suffered from pulmonary embolism. The evidence of PW2 is extracted hereunder:

"k.rh.M.14d; go 19.08.2016 md;W filrpahf
kUj;Jtiu re;jpj;jjhF Fwpg;gplg;gl;Ls;sJ vd;why; rhpay;;y.
19.08.2016 md;W gy;kdhp vk;ghyprkhf ,Uf;fyhkh
vd;W nfs;tpf;Fwp nghlg;gl;Ls;nsd; vd;why; rhpjhd;.
fspdpdf;fyhf ghh;f;Fk; nghJ neha; mwpFwpfs; ,Ue;jij
itj;J ,ij Fwpg;gpl;Ls;nsd;. gy;kdhhp vk;ghyprk; vd;gJ



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v';fSila kUj;Jt rpfpr;irapd; tpisthfnth my;yJ mtUf;F
Vw;gl;l fha';fspdhnyh Vw;gl;oUf;f tha;g;gpy;iy vd;W
brhd;dhy; ePskhd vYk;g[Kwpt[Vw;gLk; egh; ePz;l
ehs; elf;fhky; ,Ue;J my;yJ njitahd mst[elf;fhky; ,Ue;J
gpd;dh; kPz;Lk; elf;Fk; nghJ ,J Vw;gl tha;g;g[s;sJ. ,ij
ehd; kUj;Jt hPjpahf mDkhdj;jpd;go TWfnpwd;.
19.08.2016k; nijpapy; nehahsp KUnfrDf;F ECG,
ECHO, D dlamer, X-ray, APG nrhjid Mfpait
bra;ag;gl;L mjDila mwpf;iffs; bgwg;gl;lhy; jhd; ehd;
nfs;tpf;Fwp nghl;l gy;kdhp vk;ghyprk; vd;gJ ,Wjpahf
cWjp bra;a Koa[k; vd;why; fspdpf;fyhft[k; kw;w
ghpnrhjids; bra;Jk; ,uz;ila[k; xg;gpl;L ghj;j;J jhd;
,Wjpahf brhy;y Koa[k;.”

23.We were taken through the extensive cross examination



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that had been made by the learned counsel for the Insurance Company. We do not find that the evidence of PW2 has been shaken, let alone broken. The aforesaid evidence of PW2 when marshalled with Ex.P.14 and Ex.P.23, lead us to the conclusion that the deceased Murugesan was suffering from the injuries and as diagnosed with pulmonary embolism that had occurred consequent to the accident on 28.02.2016.

24.Before the Tribunal, the only evidence that was available was that of PW2. The Insurance Company did not take any effort to let in any expert evidence before the Tribunal to dislodge the possible case that was let in by the claimants. The Tribunal cannot be faulted for placing reliance upon PW2 and coming to the conclusion because

(1)the evidence of PW1 is consisted and unshaken

(2)the medical records were written on 19.08.2016, a couple of weeks, before the death of Murugesan. It is the duty of the



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Insurance Company to have let in the contra evidence but unfortunately it failed to do so at that time. Further, the medical endorsement on embolism is contemporaneous with the complaints of breathlessness by Murugesan.

25.Ex.P.14 and Ex.P.23 reveal the continuous treatment for over a period of six months that were taken by Murugesan. Murugesan had also presented himself for the treatment at the time which the Doctors asked him to come for the check up. These facts would show that it is probable that the death has occurred due to pulmonary embolism.

26.Apart from that, when there is no evidence to rebut the same and when the view that has been taken by the Tribunal is probable, we do not want to interfere with the finding, as it is not perverse or capricious.



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27.The position of law has been clearly laid down by two Judgments in **Jothi v. Viruthasarani and others [2007 (2) TNMAC 374]** and **New India Assurance Company Limited v. Vijayakumar [2014 (2) TNMAC 685]**. As in those cases, the appellant in the present case has failed to let in any evidence to show that the deceased Murugesan had died due to some other sickness. The severity of the injury in this particular case lead us to the conclusion that Murugesan died only due to the causes connected with the accident. Consequently, we constrain to reject the arguments of Mr.Arunkumar.

28.Insofar as the aspect of the compensation is concerned, the deceased was 40 years old at the time of the accident. He was working as a heavy vehicle driver, and left behind his mother (since deceased), his young widow and two minor children.



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29.The Court has taken Rs.13,000/- as notional salary which we find is reasonable and the multiplier as well as the heads of compensation on the basis of which compensation is granted is reasonable and it does not require interference.

30.We have to note that the mother of the deceased Murugesan was awarded a sum of Rs.2,05,500/-. The legal representatives of the deceased Murugesan are his wife and two minor children. Taking into consideration that the Motor Vehicles Act is a beneficial legislation, the amount that has been awarded to the 4th respondent, Saraswathi, will be kept in deposit till the 2nd and 3rd respondents attain majority. It shall be apportioned to 50% each and paid to the minors accordingly.

31.In fine, the order of the Court below in M.C.O.P.No.202



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of 2016 does not require interference.

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Accordingly, this Civil Miscellaneous Appeal is dismissed.

No Costs. Consequently, connected Civil Miscellaneous Petition is closed.

(R.S.M., J) (V.L.N., J)
22.08.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
mps

To

The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Erode.



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R. SUBRAMANIAN, J.
and
V. LAKSHMINARAYANAN, J.

mps

Pre-Delivery Judgment in
C.M.A.No.1750 of 2021
and
C.M.P.No.9288 of 2021

22.08.2023