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C.M.A.No.1886 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 21.06.2023

Judgment Delivered On : **17.07.2023**

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY

C.M.A.No.1886 of 2022

1. Amutha
2. Dharani
3. Kamali
4. Minor Balaji

... Appellants

Versus

- 1.Rajesh
- 2.The Manager,
ICICI Lombard General Insurance Company Limited,
No.1/D, Chottabai Street,
Nungambakkam, Chennai – 6.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award against the judgment and decree dated 11.11.2021 and made in M.A.C.T.O.P.No.93 of 2019 on the file of the Motor Accident Claims Tribunal, Special Motor Accident Compensation Claims Tribunal, Special Sub Court, Thiruvannamalai.

For Appellants : Mr. M. Malar

For Respondents : Ex parte - R1
: Mr. Sivakollappan (for R2)



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JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.

A.The Appeal:

This Civil Miscellaneous Appeal is filed by the Claimants, aggrieved by the Award of the Motor Accident Claims Tribunal, Special Motor Accident Compensation Claims Tribunal, Special Sub Court, Thiruvannamalai, dated 11.11.2021 in M.A.C.T.O.P.No.93 of 2019 in and by which, the claim filed by the appellants/claimants was partly allowed and a total sum of Rs.51,340/- was awarded as the total compensation.

B. Brief facts of the Case:

2. One *Rangasamay*, a Mason by profession, who was aged 43 years as of the year 2018, was travelling in a two-wheeler on 31.10.2018 and while so, at about 4:45 P.M., a Hyundai Car bearing Registration No.TN-12-H-8872 was driven in a rash and negligent manner and hit the motorcycle from behind, on account of which, the said *Rangasamy* sustained grievous injuries including a fracture in his right lower limb. He was admitted to Thiruvannamalai Government Medical College Hospital and was discharged on his own request on 03.11.2018. It is stated that he got discharged from the Government Hospital, so as to undergo a non-



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fixational/external fixation procedure at the native treatment method hospital at *Nagari Puthur* Hospital in Andhra Pradesh. Thereafter, while he was taken to the said hospital on 18.11.2018, he died. Hence, the claimants, being his wife and 3 children filed the above M.C.O.P.No.93 of 2019 on the file of the Motor Accident Claims Tribunal, Thiruvannamalai.

3. The claim petition was resisted by the respondents including the Insurance Company on the ground of negligence as well as on the ground that the death was not an account of the accident, but an account of coronary artery disease.

C. Findings of the Tribunal:

4. The first claimant examined herself as **P.W.1** and one *Udaykumar*, an eyewitness to the accident was examined as **P.W.2** and Doctor *Kamalakannan* who conducted the post-mortem was examined as **P.W.3**. On behalf of the respondents, one Junior Assistant from the RTO Office, Thiruvannamalai was examined as **R.W.1**, and no documentary evidence let in on behalf of them.

5. The Tribunal thereafter considered the case of the parties and found that the claimants were unable to produce a valid licence for the deceased to ride a two-wheeler and therefore, concluded that the deceased was riding the two-wheeler without a licence and thereby contributed 15%



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towards negligence and apportioned the negligence as 85% and 15% between the deceased as well as the offending vehicle.

D. Decision of the Tribunal:

6. Thereafter the Tribunal considered the evidence on record, including the Post-mortem report and the final opinion rendered therein, and held that since the deceased died only due to Coronary Artery Disease, the same was not due to the accident. Thereafter, the Tribunal awarded a sum of Rs.35,000/- towards extra nourishment of the deceased for the said 18 days; Rs.5,000/- for the Attender charges; Rs.15,000 for the transportation expenses; Rs.5,400/- as loss of income during the treatment period and after calculating a sum of Rs.60,400/-, deducted 15% towards the contributory negligence and ultimately, the Tribunal awarded a sum of Rs.51,340/-, aggrieved by which, the claimants are on appeal before this Court.

E. The Submissions:

7. Heard, *Mrs. M. Malar*, learned Counsel appearing on behalf of the appellants, and *Mr. Sivakollappan*, learned Counsel appearing on behalf of the Insurance Company.

8. The learned Counsel for the appellant would submit that the



finding of the Tribunal that the deceased did not die due to the accident is erroneous in law, in view of the specific answer given by P.W.3 in his evidence that the death could have been due to the shock and stress, and the consequential heart attack due to the fracture. Therefore, the Tribunal ought to have concluded that the death happened because of the accident and ought to have granted compensation accordingly. In support of his contentions, the learned Counsel relied upon the judgment of this Court, in ***The Oriental Insurance Company Limited Vs. T.R.Subramani (Died) & Ors.***¹.

9. Per contra, the learned Counsel appearing on behalf of the Insurance Company would submit that on account of the accident, he suffered only a fracture. Even though he was admitted into Government Medical College Hospital, Tiruvannamalai, and he on his own request without taking treatment for the fracture, got himself discharged. Only 18 days thereafter, he died and upon Post-mortem, it is categorically mentioned in ***Ex.P-3***, that the cause of death of the deceased was due to Coronary Artery Disease. Therefore, when the deceased died on account of a disease, the Tribunal has rightly rejected the case of the claimants, and the Award made is in order.

¹ CDI 2012 MHC 5452



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F. Decisions of this Court:

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10. We have considered the rival submissions made on either side and perused the material records of the case. In **Ex.P-3**, the opinion as to the cause of death is mentioned, as the deceased would have appeared to have died due to Coronary Artery Disease. The Post-mortem report also mentions one *ante-mortem* injury as an “irregular complete fracture on the middle 1/3rd of both bones of a right leg with surrounding areas of soft tissue contusion and extravasations’ of blood”. In his examination before the Court, **P.W.3**/the Doctor had deposed as follows:

“...31.10.2018 தேதியிட்ட ரங்கசாமி வயது 43 த/பெ. கண்ணையன், சுக்காபாளையம் கிராமம் காட்டாம் பூண்டி அஞ்சல், திருவண்ணாமலை தாலுக்கா என்பவரது விபத்து பதிவேடு சான்றிட்ட நகல் நீதிமன்றத்திற்கு எடுத்து வந்துள்ளேன் மேற்படி ஆவணத்தை நீதிமன்றத்தில் தாக்கல் செய்கிறேன் அது ம.சா.ஆ.5 ஆகும். 31.10.2018 மாலை 6.45 மணிக்கு மருத்துவர் ரூபா என்பவர் பணியில் இருந்தபோது அவசர சிகிச்சை பிரிவில் மேற்படி நபரை அவருடைய மருமகன் உலகநாதன் என்பவர் சிகிச்சைக்காக அழைத்து வந்தார். அப்போது மேற்படி நபர் சுக்காபாளையம் அருகில் உள்ள மசதியில் சுமார் மாலை 4.45 மணியளவில்



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அடையாளம் தெரியாத நான்கு சக்கர வாகனம் தன்னை மோதியதாகவும் தான் இரண்டு சக்கர வாகனத்தில் இருந்து கீழே விழுந்ததாகவும் கூறினார். அப்போது காயம் மேற்படி நபர் தனக்கு வலது முழங்காலில் விக்கம் இருப்பதாகவும் தெரிவித்தார் அவரை பரிசோதனை செய்த போது சுயநினைவுடன் இருந்தார். அவருடைய வலது காலில் வலி மற்றும் வீக்கம் காணப்பட்டது. அவரை தீவிர சிகிச்சை பிரிவில் அனுமதிக்கப்பட்டார். என்னிடம் காட்டப்படும் ம.சா.ஆ³ பிரேத பரிசோதனையின் போது இறந்த நபரின் வலது காலில் நடு முன்றாம் பகுதியில் இரண்டு எலும்புகளும் ஒழுங்கற்று முழுவதும் உடைந்து அதை சுற்றி ரத்தம் வெளியேறி காணப்பட்டது. மேற்படி நபர் Coronary ரத்தகுழாயில் ஏற்பட்ட வியாதியின் காரணமாக இறந்திருக்க கூடும் என்று என்னுடைய கருத்துரையை வழங்கினேன்.”

10.1 In his re-examination, he deposed as follows:-

“மறு விசாரணை :

.... மேற்படி நபருக்கு ஏற்பட்ட எலும்பு முறிவு காரணமாக அவருக்கு அதிர்ச்சி மனவேதனை ஏற்பட வாய்ப்பு உண்டு என்றால் சரிதான். அதனால் அவர் மாரடைப்பு வந்து இறந்திருக்க வாய்ப்பு உண்டு என்றால்



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சரிதான்.”

10.2 In his Chief-examination, he deposed as under :

“குறுக்கு விசாரணை :

... மேற்படி நபருக்கு காலில் இரண்டு எலும்புகளும் முறிந்துள்ளதால் அதிக வலியும், மன அழுத்தமும் ஏற்பட வாய்ப்பிருக்கிறது....”

11. In this background, it can be seen that the deceased was having Coronary Artery Disease, which means the deposit of calcium etc., in the inner wall / shrinkage of the arterial space, which happens over a period of time and the person dies at a particular point where the functioning of the heart collapses. The deceased was leading his normal life even with the said disease. But when his lower limb is fractured and remained unfixed, it goes without saying that the same would cause extreme pain and leading to severe stress. It is only this stress which leads to heart attack and the deceased died. It is in this scenario, **P.W.3** has deposed so in his re-examination. Scanning through medical literature, one can understand Stress is an important reason for death due to Cardio Vascular Diseases **(Disentangling the Links Between Psychosocial Stress and Cardiovascular Disease – By Michael T. Osborne, Lisa M. Shin, Nehal N. Mehta, Roger K. Pitman, Zahi A. Fayad and Ahmed Tawakol - Originally**



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published 14 Aug 2020 <https://doi.org/10.1161/CIRCIMAGING.120.010931>

Circulation: Cardiovascular Imaging. 2020;13:e010931) and that fracture can cause unbearable pain and stress (*Griffioen MA, Glutting J, O'Toole RV, Starkweather AR, Lyon D, Dorsey SG, Renn CL. Transition From Acute to Chronic Pain in Lower Extremity Fracture Patients: A Pain Phenotyping Protocol. Nurs Res. 2020 Mar/Apr;69(2):149-156. Doi: 10.1097/NNR.0000000000000407. PMID: 31977841; PMCID: PMC7254979*)

12. In the teeth of the said medical literature, the evidence of **P.W.3** cannot be discarded. The expert in the instant case, namely **P.W.3**, who had categorically deposed that there are chances of heart attack due to the stress created by the pain on account of fracture, and since both the bones were fractured, extreme pain and stress could be caused and it can be seen that the hale and healthy individual, even though he was having deposits in the coronary artery, died on the 18th day after the fracture. In that view of the matter, we are of the view, that when the evidence of the expert points out that the death could have been also the result of the injury, namely fracture caused the accident, the finding of the Tribunal that merely because the same is not mentioned in the opinion in **Ex.P-3**, cannot be accepted. The opinion in **Ex.P-3** is recorded, based on what the Post-mortem surgeon



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found upon conducting the Post-mortem and opening of the body. Only when the preceding accident and the fracture have been put to him and was directed to explain as to whether the said death due to coronary artery diseases, could have been triggered/ caused by the injury, which happened in the accident, he admitted that it can happen. In that view of the matter, we hold that the death of the deceased was on account of the accident.

13. But the claimants could not produce a valid driving licence for riding the two-wheeler, and therefore, the tribunal has already fixed contributory negligence at 15% and we agree with the same. This apart, we could see that when both bones got fractured, without undergoing treatment at the Government hospital, it is the deceased own making that he got discharged himself from the Government hospital and decided to take a non-fixational procedure by travelling up to *Nagari Puthur*. Therefore, by his own conduct, he has further contributed to the death. As timely intervention/fixational procedure if performed, the risk would have been lesser. Thus, there is further negligence on the part of the deceased to take reasonable care of himself which we quantify at 35% in all the contributory negligence on the part of the deceased is quantified at 50%.

14. Even though it is pleaded that the deceased was Mason and was



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earning a sum of Rs.20,000/- per month, no proof whatsoever has been made in respect thereof, and therefore, we have no other option than to take only a notional income. By the Judgment of this Court in C.M.A.Nos.2210 & 2218 of 2021 dated 13.06.2023, and etc., we have held that the notional income has to be taken only as Rs.15,000/- in respect of the accidents at the relevant period. Since he was a self-earning person and was aged more than 40 years, adding 30% for the future prospects as per the Judgement of the Hon'ble Supreme Court of India, in **National Insurance Company Limited Vs. Pranay Sethi¹**, since there are four dependants, 1/4th deduction is to be made for his personal expenses, i.e., Rs.15,750/-(Rs.15,000/- x 40% - 1/4). Since the deceased was aged 43 years, the multiplier '13' is fixed as per the decision of the Hon'ble Supreme Court of India, in **Sarla Verma and others Vs. Delhi Transport Corporation and another.²**, the loss of dependency to the family is quantified at Rs.24,57,000/- (Rs.15,750/- x 12 x '13'). The compensation amount payable to the claimants would be as follows:

- | | |
|-------------------------------------|-------------------|
| (A) Loss of Earnings | : Rs. 24,57,000/- |
| (B) Lost of Estate | : Rs. 15,000/- |
| (C) Parental and spousal consortium | : Rs.1,60,000/-; |

¹ 2017-13 SCALE 12

² 2009 ACJ 1298 SC



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(D) Funeral expenses : Rs.15,000/-;

TOTAL : Rs. 26,47,000/-

Less 50% for Contributory Negligence: Rs. 13,23,500/-

Out of the total compensation, the wife of the deceased is entitled Rs.4,23,500/- and the three children are entitled to Rs. 3,00,000/- each.

G. The Result:

15. In the Result C.M.A.No.1886 of 2022 is allowed on the following terms:

(i) The respondents are jointly and severally liable to pay a total compensation of Rs.13,23,500/- along with interest at the rate of 7.5% per annum, from the date of claim petition till the date of realization;

(ii) The second respondent/ Insurance Company shall deposit the above said sum along with accrued interest, by deducting the amount, if any, already paid within a period of eight weeks from the date of receipt of a copy of this order;

(iii) Upon deposit thereof, claimants Nos.1 to 3 will be entitled to withdraw their respective shares and the share in respect of the 4th claimant being a



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minor, shall be deposited into in any one of the Nationalised bank, in the interest bearing Fixed Deposit, till the minor attains majority;

(iv) On such deposit, the Tribunal shall directly credit the amount of compensation to the S.B. Account of the claimants through NEFT/RTGS mode, as per the Division Bench decision of this Court in *The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others*³,

(v) The claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation amount;

(vi) The claimants shall be entitled to proportionate costs throughout.

(J.N.B,J.) (D.B.C, J.)
17.07.2023

Index : Yes
Speaking Order
Neutral citation : Yes
klt

To

1. The Motor Accident Claims Tribunal,
Special Motor Accident Compensation Claims Tribunal,

³. 2016 (2) LW 561: 2016 SCC OnLine Mad 1913
<https://www.mhc.tn.gov.in/judis>



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Special Sub Court, Thiruvannamalai.

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



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**J. NISHA BANU, J.
and
D.BHARATHA CHAKRAVARTHY,J.**

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Pre-Delivery Judgment in

C.M.A.No.1886 of 2022

17.07.2023