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C.M.A.No.2376 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.06.2023

PRONOUNCED ON: 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2376 of 2017 and

C.M.P.No.12710 of 2017

The National Insurance Company Limited
Jerome Building 1st Floor,
Kottai Station Road, Trichy -2

... Appellant/2nd Respondent

Vs.

1. Angammal

2. Raji

3. Balachandran

4. Sangeetha

5. Sivakumar

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and Judgment passed in M.A.C.T.O.P.No. 77 of 2011 dated 03.10.2016 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur and pass



C.M.A.No.2376 of 2017

orders.

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For Appellant : M/s. N.B. Surekha
For Respondents : M/s.T. Gopinath

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the Insurance Company against the award passed in M.A.C.T.O.P.No. 77 of 2011 dated 03.10.2016 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur, whereby the Motor Accidents Claims Tribunal has awarded a sum of Rs.9,79,362/- as compensation to the claimants with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. On 06.06.2009 at about 4.00 p.m the deceased Angammal was riding in a Yamaha Motor Cycle bearing Registration No.T.N.48-K-6294 as a pillion rider along with one Rengaraj on the Perambalur-



Thuraiyur Road from East to West direction and when they were nearing Senjeri Colony Street, at that time a Hero Honda Motor cycle bearing Registration No.T.N.46-J-2313 belonging to the first respondent came in the opposite direction ridden by its rider in a rash and negligent manner and dashed against the vehicle in which the deceased was travelling. Due to the accident, the deceased/Angammal sustained multiple injuries and she was admitted in the Government Hospital, Perambalur, after giving first Aid she was shifted to ABC Hospital, Trichy. Inspite of continuous treatment given to her, she was succumbed to the injuries sustained in the accident on 30.10.2011. A criminal case is also registered against the rider of the first respondent two wheeler in Crime No. 1632/2009 under Sections 279 and 337 of I.P.C on the file of Perambalur Police Station. Hence the deceased herself while she was under treatment has filed a claim petition in M.A.C.T.O.P.No. 77 of 2011 seeking a sum of Rs.21,000,000/- as compensation from the Respondents.

4. The first respondent - vehicle owner, remained ex-parte before the Tribunal. The second respondent - Insurance Company filed their counter wherein they have stated that the rider of the Hero Honda Motor cycle



bearing Registration No.T.N.46-J-2313 belonging to the first respondent suddenly crossed the road without notice the oncoming vehicle and contributed to the accident. The accident took place only due to the negligence driving of the driver only. There is no nexus between the injuries sustained by the deceased Angammal and her death as she died only two years after the accident and the claimants have to prove that the cause of death of the deceased/Angammal is only due to the injuries sustained in the accident. They have also denied the occupation income, nature of injuries sustained by the deceased and prays to dismiss this petition.

5. Originally the deceased herself has filed the claim petition before the Tribunal seeking compensation of the injuries sustained by her. After her death, claimants 2 to 4 have been impleaded as legal heirs of the deceased Angammal.

6. Before the Tribunal, the claimants have examined P.W.1 to P.W.3 and marked Exhibits Ex.P.1 to Ex.P.12. On the side of the Respondents R.W.1 and R.W.2 were examined and Exhibits Ex.R1 to Ex.R3 were marked.

7. After considering the evidence placed on record the Tribunal has



awarded compensation on the following heads: Loss of Income Rs.6,72,000/-, Loss of Consortium Rs.50,000/-, Loss of Love and Affection Rs.50,000/- Funeral Expenses Rs.20,000/- Transportation charges Rs.10,000/-, Medical Expenses Rs.1,75,362/- Damage to clothing Rs.2,000/- Further the Tribunal awarded interest at the rate of 7.5% per annum from the date of petition till the date of realisation. Aggrieved over the quantum fixed by the Tribunal the Insurance Company have filed this appeal.

8. In Point No.1, the Tribunal has held that whether the rider of the two wheeler is liable for the accident and the second respondent as the insurer has to indemnify liability of the first respondent. There is no serious challenge made in this appeal regarding this finding.

9. The learned counsel for the Appellant/Insurance company has mainly contended that there is no evidence to prove that the death was caused only due to the injuries sustained in the accident, there is no nexus between the Injuries and the death and no post mortem conducted. Hence, prays this Court to exonerate the liability fixed for the death of deceased.

10. Per Contra, the learned counsel for the claimants have submitted that the injured has sustained grievous head injuries and was also continuously under treatment. In spite of best treatment given to her, she was



not able to recover from the injuries sustained, and succumbed to the same.

The Tribunal has rightly come to the conclusion that the injuries sustained by the deceased in the accident is the cause for the death and there is ample evidence placed on record to support the case of the claimants and prays to dismiss the appeal.

11. The point arises for consideration in this appeal is that whether the deceased Angammal was succumbed to the injuries sustained by her in the accident held on 06.09.2009 as she died only after two years after the accident on 30.10.2011 and no post mortem has been conducted on her body.

12. Admittedly the deceased has sustained grievous injuries and the claimants have marked Ex.P.2/Discharge summary which contains the history of the treatment and nature of injuries sustained by her. The date of admission i.e on 06.09.2009 it is recorded as follows:

This 45 years old lady was admitted to this Hospital following an alleged H/O RTA on 06.09.2009. Post traumatically she had H/O loss or consciousness.

*On Examination, she was irritable, afebrile.
Pulse: 92/min, BP 130/90mm/Hg Pupils equal
round and normally reacting to light
GCS: 8/15 (EO3 VR2 BMR3)
Local examination revealed abrasion over ®
auricular region, abrasion over ® scapular region*



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C.M.A.No.2376 of 2017

two abrasions over (L) Knee (+)

Patient was emergently intubated and put on mechanical support.

Central Venous access was established.

Naso gastric tube was placed. Her bladder was catheterized and clear urine was drained out.

Her basic hematological parameters including coagulation profile USG of abdomen were within normal limits.

X-Rays of chest-AP, pelvis with both hips-AP were taken which revealed ® clavicle fracture which was treated conservatively.

Ct scan of brain on 06.09.09 revealed undisplaced linear fracture of right Zygomatic arch and soft tissue swelling in the right parietal region. There is localised traumatic subarachnoid hemorrhage in the parietal sulci on both side with no significant mass effect.

She was treated with antiepileptics, antiedema measures, antibiotics and other cerebro protective measures.

Patient was off ventilator was and her trachea was extubated 09.09.09 and her trachea was extubated on the same day.

Subsequently on 10.09.2009 yet another CT scan report has been recorded and the same reads as follows:

On 10.09.09 patient developed features of hyponatremia, hypokalemia and hypoxemia for which she was treated with appropriate and adequate measures.



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C.M.A.No.2376 of 2017

Repeat CT scan of brain on 11.09.2009 revealed minimal focal subarachnoid bleed in parietal sulci.

Conservative measures were continued

She had increased upper air secretions

Once again on 19.09.2009 elective Percutaneous tracheostomy was done and it was recorded that there was no subsequent improvement in her health condition and the same reads as follows:

She had features of ® hemiparesis for which she was treated with physical therapy and rehabilitative measures

There was no significant improvement in her general condition.

However on 21.09.2009 a CT scan report was obtained and the same reads as follows:

Follow-up CT scan of brain on 21.09.2009 revealed suggestive of subdural hygroma in the right fronto-parietal and left parafalcine region with mild midline shift to left and cortical compression.

13. On 22.09.2009 under Ga, ® frontal Burrhole and evacuation was done for subdural hygroma under tension was done wherein it was reported that she had progressive improvement in her neurological status. Thereafter,



on 16.10.2009 she was discharged from the hospital and ordered to review after one week with Neuro surgeon and review the Ortho surgeon on 27.10.2009.

14. The claimants have not produced any records to prove her health condition thereafter. However, they have examined the son of the deceased as P.W.1/Balachandiran who has deposed that his mother was aged about 45 years at the time of accident and she was doing agricultural work and earning Rs.6,000/- per month and she was a earning member of the family. After the accident she was not able to do any of her regular work and has become immobilised and she was in bedridden condition. The evidence of P.W.1 shows that prior to the accident, she was hale and healthy and she was not having any ailment prior to the accident. The claimants have also examined P.W.3/Medical Officer from Government Hospital, Perambalur to prove that the deceased was died only due to the injuries sustained by her in the accident. After perusing all the the materials on record produced to him he has given opinion that the deceased would be died due to the accident.

15. The Medical Officer has categorically deposed before the Tribunal that the injuries sustained by her on the brain would be leading for



various complications which resulted in “ Cardiac arrest”

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16. Considering the fact prior to the accident the deceased was hale and healthy and she has sustained severe brain injuries in the accident supports the deposition of P.W.1 regarding the cause of death. The Tribunal has appreciated all the materials and evidences in a proper perspective and this Court finds there is no infirmity in the above finding. The claimants by examining P.W.3/Medical Officer from Government Hospital, Perambalur and by marking discharge summary, they have proved that the severe brain injury had lead to the cause of her death. Hence the contention of the Insurance company is liable to be rejected. Relying on the evidence of R.W.1/V.A.O by the Insurance Company is not sufficient to rebut the evidence adduced by the claimants, with regard to the cause of death. The R.W.1/VAO has deposed that he has conducted enquiry in the neighbourhood of deceased and in the enquiry he came to the conclusion that the deceased died due to natural cause and not by the injuries sustained in the accident. However, in the cross examination it is elicited from him that on enquiry, he came to know that Angammal was under coma for some period and subsequently he died. This evidence also supports the case of the claimants that the deceased was immobilised and was died after she was in



C.M.A.No.2376 of 2017

coma stage and the contention of the Insurance company is liable to be rejected.

17. In the result, this Civil Miscellaneous Appeal is dismissed and the award passed in M.A.C.T.O.P.No. 77 of 2011 dated 03.10.2016 on the file of the Motor Accidents Claims Tribunal, Principal District Judge is hereby confirmed. Consequently the connected miscellaneous petition is closed. No costs.

14.07.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Motor Accident Claims Tribunal,
Principal District Judge, Perambalur

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



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C.M.A.No.2376 of 2017

K.RAJASEKAR,J.

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Pre delivery Judgment made in
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C.M.A.No.2376 of 2017

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