



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.09.2016

DELIVERED ON : 06.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.2078 of 2013

- 1.Jayasree
- 2.Minor Varsha
- 3.Minor Suriyavarshan
- 4.Karupiah

... Appellants/Petitioners 2 to 5

(Minor appellants 2 and 3 are represented by the mother/natural guardian - the first appellant)

Vs.

- 1.N.Lakshmanan

- 2.New India Assurance Company Limited,
Door No.248-B, Kamarajar Salai,
Madurai.

... Respondents 1 & 2/
Respondents 1 & 2

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1100 of 2009, dated 06.06.2013, on the file of the Motor Accident Claims Tribunal - II Additional Sub Judge, Madurai.

For Appellants : Mr.C.Godwin

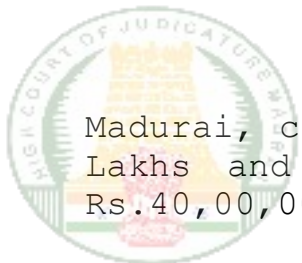
For Respondents : Mr.R.Suresh Kumar for R.2

R.1 - Exparte

JUDGMENT

M. SATHYANARAYANAN, J.

The claimant, namely, K.Veeriah, who sustained grievous injuries in the accident that took place on 27.08.2008 at 05.30 p.m., filed a petition in M.C.O.P.No.1100 of 2009 on the file of the Motor Accident Claims Tribunal - II Additional Sub Judge,



Madurai, claiming compensation of Rs.61,71,000/- (Rupees Sixty One Lakhs and Seventy One Thousand only), restricted to a sum of Rs.40,00,000/- (Rupees Forty Lakhs only).

2. The claimant, during the pendency of the claim petition, died and therefore, his wife, minor son and minor daughter and father of the deceased claimant came on record and prosecuted the said claim petition. The Tribunal, vide order dated 06.06.2013, has held that there is no proximity to the cause of death, viz., injuries sustained by the deceased claimant and therefore, did not award any compensation. However, for the treatment taken by the deceased claimant and for transportation as well as for other incidental expenses, the Tribunal had awarded a compensation of Rs.7,73,465/- (Rupees Seven Lakhs Seventy Three Thousand Four Hundred and Sixty Five only) with interest at the rate of 7.5% per annum from the date of petition till date of realisation, vide impugned award cited above. The compensation awarded by the Tribunal is as follows:

Sl.No.	Head(s)	Amount(s)
1.	Transportation Charges	Rs. 10,000.00
2.	Nutrition Expenses	Rs. 10,000.00
3.	Medical Expenses	Rs.7,53,465.00
Total		Rs.7,73,465.00

3. The legal representatives of the deceased claimant, aggrieved by the rejection of the prayer for compensation under other heads, had filed this appeal.

4. The facts leading to the filing of this appeal, briefly narrated, are as follows:

4.1. The deceased claimant, a lawyer by profession, was riding a two wheeler, viz., Pulsar bearing Registration No.TN-58-J-1926, at about 05.30 p.m. at 27.08.2008 from North to South on the left side of New Natham Main Road and when the vehicle was nearing Maya Thevar Thirumana Mandapam, an Ambassador car owned by the first respondent, bearing Registration No.TN-58-F-9865 insured with the second respondent, driven in a rash and negligent manner, came from the opposite direction and went to the wrong side of the road and hit the motorcycle and as a consequence, the deceased claimant sustained several head injuries and immediately, was taken to Apollo Speciality Hospital, Madurai and admitted as an inpatient and after discharge, he took treatment in Hanna Joseph Hospital, Madurai and subsequently, died on 30.05.2011.

4.2. The deceased claimant claimed the compensation under the following heads:

21(a). PARTICULARS OF LOSS - EXPENSES:	
PART - I	
(a) Loss of earning from 28.08.2008 to till date	Rs. 60,000/-
(b) Partial loss of earning from -- to --	
(c) Transport to Hospital	Rs. 10,000/-
(d) Extra Nourishment	Rs. 10,000/-
(e) Damages to clothings and articles	Rs. 1,000/-
(f) Others:	
1. Loss of pecuniary benefits	Rs. 36,00,000/-
2. Medical Expenses	Rs. 50,000/-
3. Loss of Consortium	Rs. 1,00,000/-
4. Compensation for expectation of life and future happiness	Rs. 2,00,000/-
5. Loss of love and affection and compensation for mental agony	Rs. 80,000/-
6. Loss of estate of the deceased	Rs. 10,000/-
7. Funeral expenses	Rs. 10,000/-
PART - II	
(g) Compensation for pain and suffering	Rs. 1,00,000/-
(h) Compensation for continuing permanent disability, if any.	
(i) Compensation for the loss of earning power	Rs. 20,00,000/-
TOTAL	Rs. 61,71,000/-

Though the deceased claimant claimed a sum of Rs.61,71,000/- (Rupees Sixty One Lakhs and Seventy One Thousand only), he restricted his claim to Rs.40,00,000/- (Rupees Forty Lakhs only).

4.3. The first respondent - owner of the vehicle was called absent and set exparte and the insurer of the vehicle, namely, the second respondent has filed a counter denying the averments made in the claim petition and took a stand that the rider of the motorcycle was not having a valid driving licence at the time of the accident and he proceeded on the wrong side, which resulted in the accident and in any event, the compensation claimed was highly exorbitant and prayed for the dismissal of the same.

4.4. During the trial of the claim petition for compensation, the wife of the deceased claimant examined herself as P.W.1 and four other witnesses were examined and Exs.P.1 to P.39 were



4.5. The second respondent did not let in any evidence.

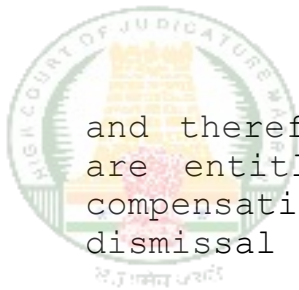
4.6. The Tribunal on consideration of oral and documentary evidence, has held that there is a lack of proximity between the cause of death and the injuries sustained by the deceased claimant and therefore, awarded the compensation as stated above and hence, the present Civil Miscellaneous Appeal is filed.

5. The learned Counsel for the appellants/legal representatives of the deceased claimants (hereinafter referred to 'the claimants'), has drawn the attention of this Court to Exs.P.3, P.6, P.9, P.14, P.17 and P.28 and would submit that the deceased claimant, on account of the accident, sustained grievous head injuries and took treatment in Apollo Speciality Hospital, Madurai and Hanna Joseph Hospital, Madurai, as inpatient as well as outpatient for a considerable period of time by incurring a substantiative medical expenditure and on account of the injuries, he suffered disability, mental agony, grave hardship and physical discomfort and his family members had also suffered very much.

6. It is the further submission of the learned Counsel for the appellants/claimants that though the date of accident was on 27.08.2008 and the deceased claimant/injured died on 30.05.2011, only on account of the injuries sustained by him, he died and he would have met the same fate even earlier, but for the expensive medical treatment and the Tribunal on hyper-technical reason, namely, non-conduct of post-mortem, had chosen to give a finding against the claimants/legal representatives of the deceased claimant.

7. It is the further submission of the learned Counsel for the appellants/claimants that the Tribunal had held that the vehicle owned by the first respondent was driven in a rash and negligent manner and it was the cause of action and thereby, held that the second respondent is liable to indemnify the insured, but, on an erroneous appreciation of facts and wrong application of legal principles, has negatived the claim for compensation under other heads, overlooking the fact that in such kind of cases, post-mortem cannot be done at all. The Tribunal has not also properly appreciated the above said exhibits as well as testimony of P.W.5 and therefore, he prays for interference.

8. Per contra, the learned Standing Counsel appearing for the second respondent/insurance company would contend that there is absolutely no evidence to connect the cause of death with the injuries sustained by the deceased claimant and admittedly, the deceased claimant died nearly after three years from the date of accident. The learned Counsel for the appellants/claimants submitted that the Discharge Summaries marked as Exs.P.6, P.9, P.14 and P.17 and the Death Certificate marked as Ex.P.28 coupled with the evidence of P.W.5 did not advance the case of the claimants



and therefore, the Tribunal has rightly held that the claimants are entitled to get reimbursement of medical expenses and the compensation under other heads and therefore, prays for the dismissal of this appeal.

9. This Court paid it's anxious consideration and best attention to the rival submissions and also perused the materials placed on record in the form of typed set of documents as well as original records.

10. The questions that arise for consideration in this appeal, are:

(i) Whether the injuries sustained by the deceased claimant in the road accident which took place on 27.08.2008, are the proximate cause of his death on 30.05.2011?

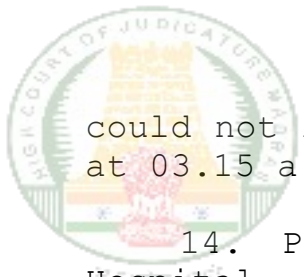
(ii) To what other reliefs, the appellants/claimants are entitled to?

Question No. (i) :

11. Ex.P.3 is the Wound C Register and as per the said exhibit, the deceased claimant suffered grievous injuries on his head and also suffered traumatic sub total amputation of R I, II, III, etc. and he initially took treatment in Apollo Speciality Hospital, Madurai. Ex.P.6 is the Discharge Summary issued by the said hospital and the contents of the same would disclose that the deceased claimant got admitted as an inpatient on 27.08.2008 and got discharged on 26.12.2008 and as per the final diagnosis, he suffered head injuries and he is also a diabetic patient.

12. At the time of his discharge, it was noted that the general condition of the deceased claimant got stabilised and his neurological status improved and was gradually ambulated with support. The deceased claimant, therefore, got admitted in Hanna Joseph Hospital, Madurai, on 11.02.2009 and got discharged on 24.08.2009 and subsequently, admitted on 24.11.2009 and discharged on 14.12.2009 and once again, got admitted on 07.07.2010 and discharged on 13.07.2010.

13. Exs.P.9, P.14 and P.17 are the Discharge Summaries issued by Hanna Joseph Hospital, Madurai and a scrutiny of the said exhibits would disclose among other things that the deceased claimant was able to walk and subsequently, suffered lower respiratory track infection and also developed fever for some days. It was also observed that he is a known case of type - 2 diabetes mellitus on treatment and he suffered right inguinal adenitis with abscess formation and he underwent a procedure on 07.07.2010 and got discharged. The deceased claimant once again got admitted on 29.05.2011 with a history of vomiting and ~~he was in a state of cardiac arrest and he was immediately intubated and had cardio pulmonary resuscitation and again, developed cardiac arrest on 30.05.2011 at 02.45 a.m., and~~



could not respond to the treatment and declared dead on 30.05.2011 at 03.15 a.m.

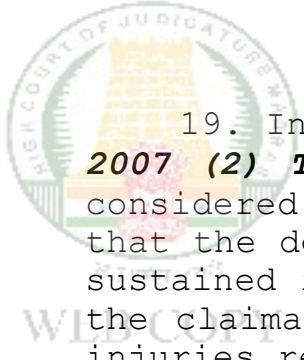
14. P.W.3 was employed as Assistant at Apollo Speciality Hospital, Madurai and he produced the case records marked as Ex.P.35 and in the cross-examination, he would depose that he was not aware of the nature of the treatment given to the deceased claimant and did not know the reasons for the admission in the said Hospital.

15. P.W.4 was the Administrative In-charge of Hanna Joseph Hospital, Madurai and he would depose that the deceased claimant was admitted in the said Hospital for four times as inpatient and he produced the records that were marked as Exs.P.36 to P.39.

16. P.W.5 was the Regional Chief Surgeon of Neurological Department of Government Rajaji Hospital, Madurai, on his retirement was the Special Consultant in Ganesh Priya Hospital, Madurai and as per the request made by the first appellant/first claimant, he deposed on going through the case records. P.W.5, in the chief examination, had deposed that diabetes and blood pressure can always cause cardiac ailment and in Ex.P.39, it has not been stated that on account of neurological complications due to head injuries, he died and some persons may develop cardiac arrest due to blood pressure as well as diabetes also.

17. It is further deposed by P.W.5 as to the cause of death of the deceased claimant, namely, Veeriah, which could be observed only through post-mortem. In the cross-examination, P.W.5 would admit that he did not treat the deceased claimant and gave his opinion based on the Discharge Summaries shown to him. He would further depose that on account of the head injuries, the concerned injured may develop fits, giddiness and vomiting also and denied the suggestion that on account of the same, cardiac arrest may be the resultant cause and denied the suggestion that the deceased claimant, due to diabetes mellitus, developed blood pressure and died.

18. In **Ramathal v. Managing Director, Cheran Transport Corporation** reported in **(2003) 10 Supreme Court Cases 53**, the cause of death after sometime the injury sustained, came up for consideration and on the facts of the case found that the death was due to primary disease hypoxic encephalopathy and immediate cause of the death was cardiorespiratory arrest and the Doctor examined on behalf of the claimants categorically stated that the accident might have been the cause of the death of the deceased and the respondents did not bring any material to show absence of link between accident and death and therefore, remanded the matter to the High Court for fresh adjudication.



19. In **Jothi & another v. Viruthasarani and others** reported in **2007 (2) TN MAC 374**, the learned Single judge of this Court has considered the similar issue and on perusal of the exhibits found that the deceased died on account of the head injury, which he had sustained in the accident and the Doctor who examined on behalf of the claimants had also deposed that the deceased died due to the injuries received in the road traffic accident.

20. In **Abdul Rahim v. Sundaresan** reported in **2011 ACJ 2197**, the deceased died on account of blood clot sustained due to head injury and the evidence of Doctor, namely, P.W.3 was also to the effect that the victim died due to the injury sustained in the accident and therefore, this Court enhanced the compensation.

21. In **New India Assurance Co. Ltd. v. R.Vijaya Kumar (since died)** reported in **2014 (2) TN MAC 685**, on a similar issue, the learned Single Judge of this Court, after taking note of the testimony of the Doctor to the effect that the death might be due to the injuries sustained by the claimant, has rejected the plea of the insurance company and sustained the award of compensation.

22. Similarly, in **M/s.National Insurance Co. Ltd. v. K.P.Kuppusamy and others** reported in **CDJ 2010 MHC 7677**, the learned Single Judge of this Court on the facts of the case found that the injured claimant died after sustaining grievous injury on his head and was in a stage of comatose and did not recover.

23. However, a careful analysis of oral and documentary evidence let in in this case, in the considered opinion of this Court, did not sustain the case of the appellants/claimants that the deceased claimant, on account of the injury sustained, had suffered a heart attack and died and the Doctors who treated the claimant, in Apollo Speciality Hospital and Hanna Joseph Hospital were not examined and P.W.5, who had gone through the Discharge Summaries had given his opinion and his oral evidence is not at all helpful to the appellants/claimants.

24. The deceased claimant suffered grievous head injuries in the accident, which took place on 27.08.2008 and died due to heart attack on 30.05.2011.

25. It is a settled position of law that the Insurance Company is liable to indemnify the insured, if the death is proximate cause to the accident. However, in the case on hand, the appellants/claimants had failed to prove the same. Therefore, the Tribunal is right in arriving at a finding that the appellants/claimants had failed to establish the said important fact for the purpose of getting compensation. Therefore, the findings rendered by the Tribunal in that regard are sustained. Accordingly, Question No.(i) is answered.

Question No. (ii):

26. The Tribunal while awarding the compensation for medical expenses and other heads, had taken into consideration Exs.P.7, P.8, P.13, P.23 and P.31 alone and arrived at a sum of Rs.7,73,465/- (Rupees Seven Lakhs Seventy Three Thousand Four Hundred and Sixty Five only) alone and rejected the rest of the exhibits and there appears to be a mistake while totalling the amount awarded under the said head.

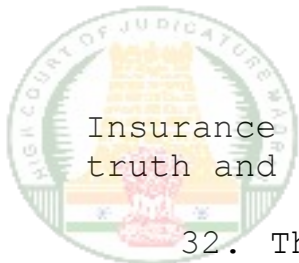
27. The claimants in their claim petition, claimed a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards medical expenses and during the course of trial, marked Exs.P.10 [Rs.6,70,000/-]; P.11 [Rs.2,25,638/-]; P.12 [Rs.15,988/-]; P.15 [Rs.63,600/-]; P.16 [Rs.17,717/-]; P.18 [Rs.33,330/-]; P.19 [Rs.14,304/-]; P.20 [Rs.8,235/-]; P.21 [Rs.6,705/-] and P.24 [Rs.41,827/-] to substantiate and prove that they have incurred considerable expenses towards medical expenses and for recuperation of the deceased claimant and a sum of Rs.10,97,434/- (Rupees Ten Lakhs Ninety Seven Thousand Four Hundred and Thirty Four only) has been spent.

28. This Court, in the earlier paragraphs, had observed that but for the treatment given, the deceased claimant could have died long back. The wife of the deceased claimant was examined as P.W.1 and she denied the suggestion that the medical bills were created and fabricated for the purpose of this case and further denied suggestion that her husband did not take treatment for the injuries sustained by him in the accident.

29. However, a perusal of the Wound Certificate marked as Ex.P.3 and the Discharge Summaries issued by Apollo Speciality Hospital and Hanna Joseph Hospital, Madurai, marked as Exs.P.6, P.9, P.14 and P.17 respectively, would disclose among other things that treatment was given for the head injuries sustained by the deceased claimant in the accident.

30. The Tribunal has also recorded a positive finding that the deceased claimant had sustained grievous head injuries in the road accident and held that the second respondent - Insurance Company is liable to indemnify the first respondent - insured and no challenge has been made to the present award. The Tribunal has failed to adduce any proper reason as to the rejection of the rest of the exhibits, but take into consideration Exs.P.7, P.8, P.23, P.13 and P.31 alone.

31. The above cited Discharge Summaries coupled with Exs.P.10, P.11, P.12, P.15, P.16, P.18, P.19, P.20, P.21 and P.24 would disclose that the treatments were also given in connection with the injuries sustained by the deceased claimant in the road accident and except a bare suggestion that the medical bills and records have been fabricated, the second respondent -



Insurance Company did not adduce any contra-evidence to doubt the truth and veracity of the said exhibits.

32. Therefore, this Court is of the considered view that the Tribunal is not justified in eschewing the said exhibits and hence, under the head 'medical expenses', apart from Rs.7,53,465/- (Rupees Seven Lakhs Fifty Three Thousand Four Hundred and Sixty Five only) awarded by the Tribunal, the appellants/claimants are further entitled to a sum of Rs.10,97,434/- (Rupees Ten Lakhs Ninety Seven Thousand Four Hundred and Thirty Four only) incurred by them towards treatment and other allied expenses and thus, they are entitled to a sum of Rs.18,50,899/- (Rupees Eighteen Lakhs Fifty Thousand Eight Hundred and Ninety Nine only) under the said head.

33. The Discharge Summaries marked on behalf of the deceased claimant would disclose that the deceased claimant was admitted as inpatient in both Apollo Speciality Hospital and Hanna Joseph Hospital, Madurai, for a quite long time and he also took treatment as outpatient and hence, he would have spent a considerable amount towards transportation and therefore, the appellants/claimants are entitled to a sum of Rs.20,000/- (Rupees Twenty Thousand only) under the head 'transportation expenses', apart from a sum of Rs.10,000/- (Rupees Ten Thousand only) already awarded by the Tribunal under the said head.

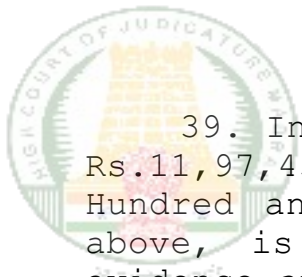
34. Similarly, only a sum of Rs.10,000/- (Rupees Ten Thousand only) has been awarded towards nutrition and comparing to the period of treatment and recuperation, the said amount is on the lower side and therefore, a further sum of Rs.20,000/- (Rupees Twenty Thousand only) is added.

35. The appellants/claimants on seeing the condition of the injured would have definitely suffered mental agony and therefore, they are entitled to a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) under the said head.

36. The Tribunal did not award any amount towards 'funeral expenses' and therefore, a sum of Rs.10,000/- (Rupees Ten Thousand only) is awarded under the said head.

37. The claimants are entitled to a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) under the head 'attendant charges' also.

38. The Honourable Supreme Court in the judgments in **Jai Singh v. Salinder** reported in **2011 ACJ 644 (SC)** and **Eastern Coalfields Ltd. v. Maya Devi** reported in **2001 ACJ 1064 (SC)**, held that when facts and evidence satisfy and justify the award of more compensation, this Court can award so.



39. In the considered opinion of this Court, further amount of Rs.11,97,434/- (Rupees Eleven Lakhs Ninety Seven Thousand Four Hundred and Thirty Four only) awarded under various heads cited above, is a just and fair compensation in the light of the evidence available coupled with the facts and circumstances of the case.

40. Therefore, the appellants/claimants are entitled to get compensation as follows:

Sl. No.	Heads	Amount awarded by Tribunal	Amount awarded by this Court	Total
1.	Medical Expenses	Rs.7,53,465.00	Rs.10,97,434.0	Rs.18,50,899.0
2.	Transportation expenses	Rs. 10,000.00	Rs. 20,000.00	Rs. 30,000.00
3.	Nutrition Expenses	Rs. 10,000.00	Rs. 20,000.00	Rs. 30,000.00
4.	Mental Agony	Nil.	Rs. 25,000.00	Rs. 25,000.00
5.	Funeral Expenses	Nil.	Rs. 10,000.00	Rs. 10,000.00
6.	Attendant Charges	Nil.	Rs. 25,000.00	Rs. 25,000.00
Grand Total				Rs.19,70,899.0

41. Accordingly, the appellants/claimants are entitled to a sum of Rs.19,70,899/- (Rupees Nineteen Lakhs Seventy Thousand Eight Hundred and Ninety Nine only) with interest at the rate of 7.5% per annum from the date of petition till date of full and final settlement, less the amount already deposited by the second respondent - Insurance Company. The first appellant/first claimant is entitled to a sum of Rs.9,70,899/- (Rupees Nine Lakhs Seventy Thousand Eight Hundred and Ninety Nine only). The appellants 2 and 3/claimants 2 and 3 are entitled to a sum of Rs.4,00,000/- (Rupees Four Lakhs only) **each** and the Fourth appellant/Fourth claimant/father of the deceased claimant is entitled to a sum of Rs.2,00,000/- (Rupees Two Lakhs only). Time for deposit is eight weeks from the date of receipt of a copy of this judgment. Accordingly, Question No.(ii) is answered.

42. In the result, this Civil Miscellaneous Appeal is ordered accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CSII)

/True Copy/



The Motor Accident Claims Tribunal -
II Additional Sub-Ordinate Judge,
Madurai.

+1cc to Mr.C.Godwin, Advocate Sr.No. 89608

JAM/18.01.2017/GSV-SV/ 11 p-3c

JUDGMENT MADE IN
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