

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.11.2017

DELIVERED ON : 04.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1396 of 2014
and
M.P.No.1 of 2014

M/s.United India Insurance Co., Ltd.,
23/81, Nainiappa Naicken Street,
Chennai-3.

... Appellant/2nd

Respondent

- Vs -

A.L.Koteeswaran (Deceased)

1. A.L.Santhakumari

(Impleaded as per order in M.P.NO.3221/2010)

...1st Respondents/
2nd Petitioner

2. M/s.Mccoy Clothing,
3/475, II Street, Kazur Garden,
Neelankarai, Chennai-41.

...2nd Respondents/
1st Respondent

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgement and decree of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, passed in M.C.O.P.No.3079 of 2007 on 25.11.2013.

For Appellant : Mr.S.Arun Kumar

For Respondents : R1-Mr.C.Munusamy

R2-Ex-parte before Trial

Court

J U D G M E N T

[Judgment of the Court was made by C.T.SELVAM, J.]

This Civil Miscellaneous Appeal arises against the judgment and decree of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, passed in M.C.O.P.No.3079 of 2007 on

25.11.2013.

2. Appellant is the Insurance Company. First Respondent is legal heir of the deceased A.L.Koteeswaran. On 24.10.2006 at about 18.30 hours, while the deceased was riding a Motor cycle bearing Registration No.TN-07-AF-0741, a bus bearing registration No.TN-22-C-9788 dashed against the two wheeler, due to which, the injured/deceased sustained injuries. Victim/claimant sought compensation in a sum of Rs.15,00,000/-. During the pendency of O.P., the injured/deceased died on 13.10.2007.

3. Before the Tribunal, on the side of respondent/claimant, 2 witnesses were examined and 16 exhibits were marked. None were examined on the side of appellant Insurance Company nor any exhibits were marked.

4. On appreciation of materials before it, Tribunal, under judgment dated 25.11.2013, found that the death has occurred owing to the rash and negligent driving of the bus. To prove the avocation of the injured/deceased, he has marked Ex.P15, salary certificate and PW-3, The Divisional Manager of Flowserve Sanmar Limited has deposed that the deceased was working as Assistant Engineer-Quality Assurance from 23.10.2006 and marked Exs.P13 to P15 and Ex.P16 Authorisation Letter. On the basis of the same, Tribunal has fixed the monthly income of the deceased at Rs.16,835/-. As the deceased was a bachelor at the time of accident, Tribunal had deducted 50% towards personal expenses and fixed the annual income at Rs.1,01,010/- $[(16,835 \times 12 = 2,02,020 - 50\%]$, applied multiplier of 17 and arrived at loss of income at Rs.17,17,170/- $[2,02,020 \times 17]$. Tribunal awarded a sum of Rs.20,000/- towards funeral expenses, Rs.50,000/- towards loss of love and affection and a sum of Rs.3,65,740/- towards medical expenses. The total compensation awarded amounts to Rs.21,52,910/-. There against, the appellant/Insurance Company has preferred this Civil Miscellaneous Appeal.

5. Heard learned counsel for appellant and learned counsel for first respondent.

6. Learned counsel for appellant submitted that in the accident the deceased had suffered fracture of both bones of the left forearm and of the left leg as also head injury. He further submitted that Ex.P1-discharge summary revealed that the deceased, who was admitted in hospital on 24.10.2006 i.e., the date of accident, had undergone surgery on 29.10.2006 and thereafter, had been discharged from hospital on 18.11.2006. Thereafter, he had resumed duty and had been to work for a period of nine months. The subsequent hospital records in Ex.P2 informed his admission into hospital on 24.09.2007 and discharge

on 26.09.2007. He had undergone surgery on 25.09.2007 for Screw Removal and 'Bone Grafting Tibia Left'.

7. Learned counsel for appellant submitted that while Ex.P1-discharge summary dated 18.11.2006 revealed that he had undergone the surgery owing to the accident, Ex.P2-discharge summary dated 26.09.2007 revealed that he had had the screws fixed at the time of the operation removed eleven months later. There was no record of his having undergone any treatment in between or further till 13.10.2007, when he died. Therefore, the deceased had fully recovered from the injury suffered by him in the accident and his death was not related thereto.

8. Learned counsel for appellant submitted that RW-1 had been entrusted the work of the investigation in the case. His investigation report is Ex.R2. He had informed of the deceased having died owing to heart attack, his death was a natural one and not the result of injuries suffered in the accident. At appellant's instance, RW-2 Doctor had been examined. He had deposed to the deceased having been at M.N. Orthopaedic Hospital, Chennai on 24.09.2007 for removal of screw. On such exercise having been done on 25.09.2007, the deceased having been discharged on 26.09.2007. The Doctor had further spoken to deceased having called at hospital on 08.10.2007 for further examination and removal of sutures and that removal of sutures was done on the said date. The circumstances reveal that the injuries suffered by the deceased had healed. RW-2-Doctor had asserted that there was no connection between the death of the deceased on 13.10.2007 and the operation undergone by him.

9. Learned counsel for appellant submitted that in the circumstances the Tribunal had erred in relating the accident suffered by the deceased to his death and awarding compensation on such basis. He submitted that the respondent would be entitled only to the medical expenses and loss of earning of the deceased suffered during his treatment at hospital and transportation expenses. सत्यमेव जयते

10. Learned counsel for appellant relied on judgment of this Court reported in The Branch Manager, Oriental Insurance Company Ltd., Vs. Monohar [2017 (2) TN MAC 81 (DB)] where the Maxim "Actio personalis moritur-cum-persona" had been applied and this Court had held that where the accident was not Causa proxima/immediate cause of death, the insurer cannot be held liable. Compensation is to be awarded only for the expenses incurred owing thereto. Learned counsel also relied on judgement of this Court in The Managing Director, Pandiyan Roadways Corporation Vs. S.Rajalakshmi and four others [2000 (IV) CTC 528] to submit that where the death of the injured was not on account of the accident, the legal representatives would be entitled to be compensated for actual expenses incurred by

claimant for treatment.

11. Learned counsel for first respondent/claimant submitted that the Tribunal had reasoned that the evidence of RW-2-Doctor could not be relied on as it was contrary to Ex.P2-discharge summary. Tribunal rightly had found that the deceased had died on 13.10.2007, five days after his review, as found in Ex.P3. Tribunal has taken into consideration Ex.P5-Medical bills and Ex.P6-prescription to arrive at the conclusion that the deceased had been on continuous medication either as inpatient or outpatient from 24.10.2006 to 08.10.2007 and rightly found that he had died owing to injuries suffered in the accident. Learned counsel relied on decision reported in Vatsala and others -Vs- Meenakshi and others [2005-1-LW 560] in support of his contention. Learned counsel also placed reliance on decision of the Calcutta High Court reported in Vidhyawati Vs. A.Guruswamy and another [2005 ACJ 433].

12. We have considered rival submissions.

13. Ex.P1-discharge summary dated 18.11.2006 inter alia reveals that the deceased suffered cerebral oedema owing to the accident. It rightly is not the respondent's/claimant's case that the deceased died owing to the head injury suffered by him since it would be far-fetched to contend that oedema i.e., excessive collection of watery fluid in cavity of the tissues of the body, as a result of accident suffered on 24.10.2006 would have led to death on 13.10.2007. The deceased had suffered a broken arm and leg. A conjoint reading of Exs.P1 and P2 and ocular testimony of RW-1 informs that the injury suffered by the deceased in the accident had healed. Exs.P13 and P14 inform that the deceased, who had been made an offer of employment on 30.09.2006, had, post operation, returned to duty and on 24.04.2007 was placed in the Executive Management Cadre and designated as an Assistant Engineer-QA [Quality Assurance]. The basic salary revised to Rs.6,225/- with effect from April 2007 as a special case had been further revised to Rs.6,525/- on 30.06.2007 and under communication dated 13.07.2007 the employer Flowserve Sanmar Limited had informed the confirmation of the services of the deceased. It therefore is not possible to relate the death of the deceased on 13.10.2007 to the accident suffered by him on 24.10.2006. Judgement reported in Vatsala and others -Vs- Meenakshi and others [2005-1-LW 560] is relied upon by learned counsel for first respondent. In such case, this Court specifically found that the deceased had suffered head injury, resulting in clotting of blood and consequent damage to the nervous system with the further result that he was bedridden and eventually died after four years owing to the injury suffered. The decision of Calcutta High Court in Vidhyawati Vs. A.Guruswamy and another [2005 ACJ 433] was a case where the Court was of the view that the injury incurred in the accident

had led to death since PW-5 therein, a Professor of Medicine in the department of the Benaras Hindu University, in clear terms indicated that the injury on the right leg that was sustained by the patient was one of the reasons for his death. In cross-examination, the said Professor has further stated that the injuries that he found might cause infection and might perpetuate failure of several organs of the body one by one. It was found that no suggestion in cross-examination to the contrary was put to the said witness nor had the respondents examined any other expert to show that the injury could not have been the cause of death. We find inapplicable both decisions relied upon by learned counsel for first respondent in the facts of the present case.

14. Accordingly, the compensation payable would be as follows:

Loss of earning	:	Rs. 1,51,515/-
Medical Expenses	:	Rs. 3,65,740/-
Transportation	:	Rs. 10,000/-

Total	:	Rs.5,27,255/-

The said sum of Rs.5,27,255/- shall be payable together with interest at 7.5% from the date of petition till the date of realization.

In the result, the Civil Miscellaneous Appeal is allowed to the extent indicated above and the claim amount awarded by the Tribunal is reduced to Rs.5,27,255/-. The appellant-insurance company is directed to deposit the amount in keeping with the present order within a period of eight weeks from the date of receipt of this judgment. Excess amount, if any, deposited shall be withdrawn by appellant insurance company. First respondent/claimant is entitled to withdraw the amount on due application. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Judge,
II Court of Small Causes, Chennai.

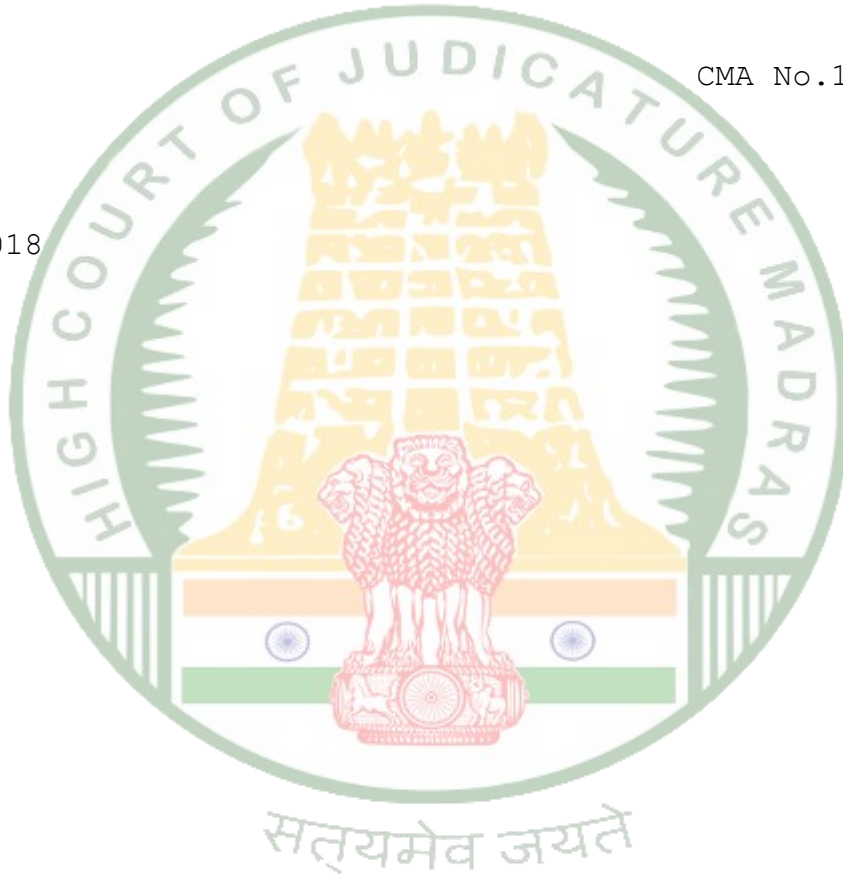
2. The Section Officer,
V.R.Section,
High Court, Madras-104(+2 copies)

+1 cc to M/s.S.Arunkumar Advocate sr 85597

+1 cc to M/s.C.Munnsamy Advocate sr 85347

CMA No.1396 of 2014

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