

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.278 of 2015

C.M.P.No.1 of 2015

The Branch Manager,
M/s.Oriental Insurance Co. Ltd.,
Thathuvacheri, Vellore.

.. Appellant

versus

Monohar (Deceased)

1. Rukumani
2. Bavani
3. Kamalammal
4. M.Dhinakaran

.. Respondents

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.296 of 2002, dated 16.06.2014, on the file of the learned Motor Accident Claims Tribunal (Subordinate Judge), Arni.

For Appellant : Mr.S.Arunkumar

For Respondents : No appearance

JUDGMENT

(Judgement of the Court was made by **S.MANIKUMAR, J.**)

Quantum of compensation of Rs.10,66,000/-, awarded to the legal representatives of the deceased in M.C.O.P.No.296 of 2002, dated 16.06.2014, on the file of the learned Motor Accident Claims Tribunal (Subordinate Judge), Arni, is challenged, on the grounds, inter alia that there is no proximity to the death of Manohar, due to the injuries, said to have been sustained, in the accident, which occurred on 12.05.2002, involving a Tipper Lorry, bearing Registration No.TN 23 F 4367, insured with M/s.Oriental Insurance Co. Ltd., Vellore, appellant herein.

2. Injured Manohar, in the claim petition, had stated that on 12.05.2002, about 05.30 A.M., when he was driving a Tipper Lorry, bearing Registration No.TN 23 F 4367, owned by the 4th respondent herein and insured with the appellant-Insurance Company, near Arcot Town bye-pass road, there was road laying work and hence, he slowed down the vehicle and attempted to halt the same, on the left side of the road. While doing so, the vehicle capsized. He sustained injuries, and acid in the vehicle spill over his face and

body. He suffered dislocation of right elbow and was permanently disabled. Hence, he filed the claim petition, claiming compensation of Rs.1,00,000/-.

3. The appellant-Insurance Company has filed a counter affidavit, contending inter alia that FIR has been given five days, after the accident. Police has referred the case as mistake of fact. According to the Company, the injured was the tortfeasor. Owner and the driver were colluding in the claim and hence, the Company is not liable to pay compensation.

4. Pending disposal of the claim, Manohar, died on 31.10.2007. Vide order in I.A.No.640 of 2012, dated 07.09.2012, legal representatives of the deceased have been added as parties. Wife of the deceased examined herself as PW.1 and reiterated the manner of accident. She further deposed that due to the accident, her husband sustained injuries in the face and body. There was fracture of right elbow. Eye-sight was lost. He was inpatient for two months in Government Hospital, Vellore. Thereafter, treated as out-patient. After the accident, he was bed-ridden. Despite continuous treatment, he died on 31.10.2007. PW.1, has further stated that as driver, he earned Rs.5,000/- per month. She has marked Ex.P1 - FIR, Ex.P2 - Wound Certificate, Ex.P3 - Medical

Sheet and Ex.P4 - Graphic Chart issued by the Government Hospital. According to her, death was due to the injuries caused in the accident.

5. PW.2, stated to be an eye-witness, has adduced supporting evidence that when the driver of the tipper lorry, attempted to park the vehicle, on the left side of the road, it capsized. He has further stated that the acid fell on his face and body, and there was fracture of right elbow.

6. On the side of the appellant-Insurance Company, RW.1, has deposed that the vehicle was insured. Accident occurred due to the rash and negligent driving of the tipper lorry. RW.1 has further deposed that even in Ex.P1 - FIR, the driver has admitted the same. According to him, no document has been filed to substantiate that death was due to injuries. Ex.R1 - Insurance Policy, Exs.R2 and R3 - Lawyer's Notice sent to the 4th respondent herein and its acknowledgement, Ex.R4 - Claim Form and Ex.R5 - Investigation Report, have been marked on the side of the appellant-Insurance Company.

7. Evaluating the oral and documentary evidence, the Claims Tribunal held that the accident occurred, due to unavoidable circumstances and that

the vehicle moved, when it was stopped on the mud road and that there was no negligence or carelessness on the part of the driver of the lorry. Thus, the Tribunal fastened the liability on the appellant-Insurance Company.

8. Going through Ex.P2 - Wound Certificate, the Tribunal has observed that the injuries were grievous in nature and therefore, construed 100% disablement. Though compensation claimed was only for Rs.1 Lakh, in the interest of justice, the Tribunal decided to apply multiplier method, by fixing the loss of income as Rs.6,000/-. After applying '17' multiplier, the Tribunal estimated the pecuniary loss as Rs.10,20,000/-. That apart, the Tribunal awarded Rs.15,000/- towards loss of consortium, Rs.10,000/- for loss of love and affection, Rs.10,000/- for transportation, Rs.10,000/- towards funeral expenses and Rs.1,000/- for damages to clothes and articles. Altogether, the Claims Tribunal awarded compensation of Rs.10,66,000/-, with interest, at the rate of 7.5% per annum, from the date of claim, till deposit and costs.

9. Being aggrieved by the award, Insurance Company has filed the present appeal, on the grounds that the legal representatives of the deceased are not entitled to make any claim, under Section 166 of the Motor Vehicles

Act, 1988m, as the deceased was the tortfeasor. Inviting the attention of this Court to the date of accident, i.e., on 12.05.2002 and the date of death, ie., on 31.10.2007, appellant-Insurance Company has further contended that the respondents did not produce any admissible proof that the death occurred, due to the injuries, alleged to have been sustained in the accident, which occurred on 12.05.2002. On the above submission, reliance has been placed on a decisions of this Court in **The Managing Director, Pandiyan Roadways Corporation, Madurai v. S.Rajalakshmi** reported in **2000 (IV) CTC 528**, **Sakunthala v. R.Gopal** reported in **2007 (2) CTC 529** and **The Branch Manager, National Insurance Co. Ltd., v. Chennammal** reported in **2014 (1) TNMAC 740**. Quantum of compensation is also disputed.

10. Though the respondents/claimants have been served and their names shown in the cause list, there is no appearance, either in person or through counsel.

11. Accident has occurred on 12.05.2002. PW.2, eye-witness, has adduced supportive evidence. FIR has been filed. Registration of FIR is only to set the criminal law in motion. Manner of accident, spoken to, by PW.1, is

supported by PW.2. In the light of the above, this Court is not inclined to set aside the finding of negligence.

12. Now, the question to be considered, is whether, the legal representatives of the deceased have substantiated that death was due to the injuries sustained in the accident and therefore, they are entitled to claim compensation, under various heads. After perusal of the documents, viz., Ex.P2 - Wound Certificate, Ex.P3 - Medical Sheet and Ex.P4 - Graphic Chart issued by the Government Hospital, the Tribunal has fixed the extent of disablement as 100%. Injuries found in Ex.P2 - Wound Certificate, are as follows:

"Injuries:

(1) Had injury medial side of the right elbow - ? # ?

Dislocation Right Elbow.

(2) Abrasion 5 x 5cm."

Ex.P3 - Medical Sheet, issued by the Government Hospital, it is stated as follows:

"Case of RTA, History of injury and details, as per the AR Copy. O/E. Pt. - GC Fair, Afebrile, CVS/RS - NAD, Pulse - 80/m, B.P. - 170/90 mph, Abd - Soft. O/E. - ? # Dislocation of Right Elbow. Diagnosis - MI/RTA. To Ortho OP 22 with X-Rays..... Eye opinion - RE - 6/24 Width 6/24 and LE - 6/24 Width 6/24."

Ex.P4 - Graphic Chart issued by the Government Hospital, is also extracted hereunder:

GOVERNMENT HOSPITAL

GRAPHIC (T.P.R.) CHART

Patient seen in eye OPD

H/o. battery acid falling in both eyes

C/o. defective vision.

O/E. both eyes - eye lids normal

conjunctive - normal

Cornea - clear

A/C - Normal

Pupils - reacting to light

Lens - Clear

Vision - RE - 6/24 Width 6/24

LE - 6/24 Width 6/24."

13. From the details of the above documents, it could be seen that the deceased had sustained an injury in the right elbow, and there was a doubt, as to whether, it was a fracture. X-Ray has been suggested. He had complained of defective vision and referred to Government Eye Hospital, Vellore. Accident occurred on 12.05.2002 and five years later, he died on 31.10.2007. There is no medical document to indicate that he suffered any other bodily injuries,

treated continuously in hospitals, developed any complication and despite the treatment, died due to the injuries.

14. The next question to be considered is what should be the quantum of compensation to be awarded. The plain meaning of the maxim "*Actio Personalis Moritur-cum-personna*" is that "a personal action dies with the parties to the cause of action". The above said maxim is an invention of English Lawyers. In AIR 1967 SC 1124 [*Girija Nandini Devi v. Bijendra Narain*], the Supreme Court observed as hereunder,

"The maxim "*Actio Personalis Moritur-cum-personna*" means a personal action dies with the person has a limited application. It operates in a limited class of actions ex delicto such as actions for damages, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages ex delicto, and does not fall with the enumerated classes. Nor is such that the relief claimed being personal could not be enjoyed after death, or granting it would be nugatory".

15. The maxim "*Actio Personalis Moritur-cum-personna*" relates only to the personal injury, pain and suffering experienced by the deceased on account of injuries and it cannot be extended to the loss of estate of the deceased. Reference can be made to the decision of this Court in **Thailammai V. A.V.Mallayya Pillai** reported in **1975 ACJ 448**, wherein, this Court held that the cause of action in respect of damages to the estate of the deceased survives and it is passed over to the legal representatives/dependants.

16. Explaining the maxim "*Actio Personalis Moritur-cum-personna*" and its applicability to the Motor Accident cases with reference to Section 306 of the Indian Succession Act, the Gujarat High Court in **Jennabai V. Gujarat State Road Transport Corporation** [**1991 ACJ 585**], at Paragraph 10, 16 and 18, held as follows:

"10. Tort, frequently, involves a non-pecuniary loss. Even pecuniary loss of the deceased, being personal to him has no proper entitlement to a place in the assessment of the damages which goes to his estate. But for the pecuniary loss suffered by the deceased on account of such injuries, an action would lie or action would survive for the benefit of the estate of the deceased. The claim, on account of loss to the estate of the deceased, would, undoubtedly, survive and would pass over to his heirs or legal

representatives. Section 306 of the Indian Succession Act does not exclude right to recover claim on the basis of proprietary right. In a case of personal injuries, arising out of vehicular accident, it may include pecuniary loss as well. This pecuniary loss or any loss which referable to the loss to estate would be a proprietary or right pertaining to property. Therefore, the right to maintain the action or to continue the action for recovery of pecuniary and proprietary loss which are referable or attributable to the loss to the estate, cannot be said to have been taken away by the provisions of Section 306 of the Indian Succession Act. If the provisions of Section 306 of the Indian Succession Act are extended to all causes of action, including those affecting proprietary or property, i.e., to the estate, it would be to stultify to a great extent the provisions of Section 212 (2). If it is stretched to that, it would be nugatory, which empowers a Hindu, Mohammadan, Buddhist, Sikh, Jain, Indian Christian or Parsi for applying for letters of administration in case of intestacy. Such a construction of section 306 of the Indian Succession Act would raise a direct conflict with the provisions of Order 22, Rule 3(1) of the Civil Procedure Code. Moreover, the liability to pay compensation is created immediately on the occurrence of the accident to the person suffering the injury and must amount to a debt payable to him and pass over to the heirs of the workman on his death and does not abate. Thus, provisions of Section 306 of the Indian Succession Act have no application of such cases. Therefore, the maxim *Actio Personalis Moritur-cum-*

persona on which Section 306 of the Indian Succession Act is based, cannot have a blanket applicability in all actions even in a case of personal injuries wherein the damages flow from the head or under the head of loss to the estate. It may be mentioned that in England, the said maxim has been criticised as harsh, unconscionable and unjust. The rightful claim falling in the realm of pecuniary or proprietary or loss to the deceased's estate would survive, which is not personal to the deceased. It may also be mentioned that the words 'personal injury' occurring in Section 306 mean bodily or physical injury as opposed to the injury to the proprietary right. Therefore, a cause of action in respect of injury to the property or loss referable to the deceased's estate flowing from the personal injury would not fall within the exception, but would, undoubtedly, survive. But, if interpreted otherwise, as held by the Tribunal, would mean unjust enrichment and benefit to the wrongdoer's estate and unjustifiable injury to the estate of the deceased. Unfortunately, the Tribunal has failed to address itself to such a vital and important aspect while considering and examining the provisions of Section 306 of the Indian Succession Act.

16. It is very clear from para 7 of the impugned judgment that the deceased had claimed Rs.2,200/- for Medical expenses and Rs.575/- for Miscellaneous expenses, etc. The claim under such heads would, undoubtedly, fall within the field of loss to the estate. If such amount would not have been spent by the deceased

it was to go to the hands of the appellants or legal representatives of the deceased. Likewise, loss of past income awardable to the deceased on account of wrong done to him subject to reasonable expenses which would have been incurred by the deceased for himself would also be a loss to the estate. It can safely be concluded that had the deceased not sustained the injuries, there would not have been loss of income and consequently there would not have been any detrimental effect on the estate of the deceased. If the unfortunate accident had not occurred the income or expenses falling within the head of loss to the estate would have augmented the estate and same would have gone in the hands of the heirs and legal representatives of the deceased. The loss of past income for the period from the date of accident till the inability on the part of the deceased to earn on account of the injuries, subject to reasonable expenses for himself, would also form a part of estate of the deceased. No doubt, the loss of income occurring after the death of the deceased would not be a loss to the estate. The action for amount of claim which is not attributable to the loss of estate of the deceased could not survive to the appellants. In other words, the heirs and legal representatives of the deceased would not be entitled to and eligible to claim the amount of claim which is not referable to or not attributable to the loss of the estate. Unfortunately, the Tribunal applied the doctrine of *actio personalis moritur cum persona* along with the provisions of Section 306 of the *Indian*

Succession Act in respect of the entire claim without taking into account the separate claim under the head of loss to the estate of the deceased, Abdul Karim Musa. This proposition of law, unfortunately, could not be brought to the notice of the Tribunal. With the result, the approach of the Tribunal in so far as it related to the dismissal of the claim in respect of loss to the estate of the deceased cannot be sustained.

18. Incidentally, it may also be mentioned that could inability to compensate under the *Workmen's Compensation Act, 1923*, in case of an employment injury to the workman abate or die on account of demise of the workman unconnected with the employment? Suppose, in a given case, the workman files an application for compensation under Section 3 of the *Workmen's Compensation Act, 1923*, and during the pendency of the proceedings he dies otherwise than as a result of the employment injuries. Would that right be lost in view of the provisions of Section 306 of the *Indian Succession Act*? If the interpretation made by the Tribunal in the present case is accepted then the liability to compensate him under the *Workmen's Compensation Act, 1923*, would abate. Of course, the language in Section 306 of the *Indian Succession Act*, no doubt, appears to be general. But it is not always that a general import must necessarily receive a general and wide meaning divorced from the material facts of the case. The expression "other personal injuries not causing the death of the party" is preceded by the words, 'defamation, assault' as

defined in the *Penal Code*. The words 'other personal injuries..... must, therefore, receive colour from the earlier words and ought to be construed with the words preceding. It is also settled proposition of law that benevolent legislation is required to be construed liberally so as to advance the underlying object and purpose of the provision. It is also well stated that if interpretation of a welfare legislation or any provision of the statute is capable of two constructions, that construction should be preferred which furthers the policy of the Act or provision concerned and which is more beneficiary for the class in whose interest the law has been made.”

17. In **V.Mepherson v. Shiv Charan Singh & Ors.**, reported in **I(1998) ACC 6**, the Delhi High Court, while testing the correctness of the award passed by the Motor Accident Claims Tribunal, considered as to whether personal damages awarded to the claimant/injured are inheritable or not. In the said case, the death was not due to the accident. The main contention was that the claim for enhancement for general damages after the death of the objector does not survive. Answering the issue, the Court at Paragraph 3, observed as follows:

“3. So far as the contention of Mr.Tarun Johri that claim for damages which was on account of suffering and pain suffered by

the deceased, to my mind, it would abet on the death of the injured. But so far as other claims under other heads those would not come to an end on the death of the objector. The right to sue would survive even on the death of the objector. As a matter of fact claim on account of special diet, medicine, conveyance etc., are such which related to the loss of the property, therefore, right to sue would not abet on the death of the objector. It would survive to his legal heirs as held by the High Court of Punjab and Haryana in the case of **Joti Ram & Ors. v. Chaman Lal & Ors.**, AIR 1985 Punjab & Haryana page 2=1 (1986) ACC 550.”

18. In **Kartar Kaur v. Dayal Singh** reported in II (1999) ACC 372 (DB), one of the issues raised before the Hon'ble Division Bench of Madhya Pradesh High Court was about the continuance of the appeal by the Legal Representatives of the injures/claimant (sons of the deceased) based on the Doctrine “Actio Personalis Moritur cum Persona”, ie., a personal claim dies with the person (claimant). Answering the issue, at Paragraph 13, the Division Bench held as follows:

“13. In view of the above, we are of the view that where the injured claimant dies as a result of the injuries during the pendency of his claim for compensation, the legal representatives would be entitled to pursue the claim as in case of death caused in

an accident by the use of motor vehicle. Where the injured dies his natural death and not because of injuries suffered in motor accident, the legal representatives would be entitled to pursue the claim to the extent as recognised by Section 306 of the Indian Succession Act, that is, the claim on account of loss to the estate of the deceased. Where in a case, the compensation has been awarded to the injured and an appeal is preferred and during the pendency of the appeal, claimant/injured dies, his legal representatives can continue the appeal for enhancement of compensation.”

19. A similar issue came up for consideration before a Hon'ble Division Bench of the Karnataka High Court in **Sridevi v. Mastak Ahamad** reported in I (2002) ACC 262 (DB). In the above reported judgment, a minor, aged about four years, sustained injuries. On the claim made by her father, Rs.72,000/- was awarded. Aggrieved by the inadequacy of compensation, an appeal was preferred by the injured through her father and during the pendency of the appeal, she died. Legal Representatives were brought on record. It was submitted that the compensation for Medical Expenses, Pain and Suffering, Loss of Amenities and general damages was on the lower side. Following the decision in V.Mepheron's case, the Hon'ble Division Bench held that the appeal

is abated in so far as the claim for damages for pain and suffering is concerned and on the question of expenses on medicines, special diet, conveyance etc., as the expenses relate to loss of estate, they would not abate.

20. Similar view has been taken by the Himachal High Court in **Ram Ashari v. H.R.T.C.**, reported in **IV (2005) ACC 379**. At paragraph 6 to 8 of the judgment, it is held as follows:

“6. It is well settled law that an action in torts for claim of compensation for damages on account of injuries suffered by an injured is a right personal to the injured. This right cannot be continued by the legal heirs or legal representatives. It is no doubt true that the legal heirs or the legal representatives can continue the proceedings insofar as they relate to the loss to the estate such as medical expenses, amount spent on treatment etc. However, the claim with regard to pain and suffering, future loss of income and such related matters is an action which is personal to the injured alone and cannot be continued after his death unless it is proved that the death is the result of the injuries suffered in the accident.

7. A Division Bench of this Court in **Narinder Kaur v. State of H.P.**, **II (1991) ACC 206 = (1991) 2 ACJ 767**, held as follows:

“(8) We have heard the learned counsel for the parties and gone through the records. The principle of *actio personalis*

moritur cum persona relates only to the personal or bodily injuries and not to the loss caused to the estate of the deceased by the tort-feasor. In its applicability, the principle stands considerably modified by the provisions of Section 306 of the Indian Succession Act, which clearly lays down that all demands whatsoever and all rights to prosecute or defend any action or special proceedings existing in favour of or against a person at the time of his death survive except causes of action for defamation, assault and other personal injuries not causing death of the party etc., which come to an end with the death of the injured. The loss of the estate is thus not covered by the exceptions contained in Section 306 of the Indian Succession Act. While taking this view, we are fortified by the decisions of the Supreme Court in ***Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair, 1986 (1) ACJ 440 : AIR 1986 SC 411 : 1986 (2) TAC 216,*** and ***M.Veerappa v. Evelyn Sequeria, AIR 1988 SC 506.*** The claimants as legal representatives of the original claimant were, as such, entitled to be substituted in his place with a view to continue the proceedings in the case and to have a decision on the claim in respect of the loss caused to the estate of the deceased.”

8. Keeping in view of the settled position of law and the fact that in the present case there is no claim for loss to the estate and the entire claim is based on the personal claim of the deceased Karam Chand, the appeal cannot be continued and

prosecuted by the legal representatives.”

21. A Full Bench of the Karnataka High Court in **Uttam Kumar (deceased) v. Madhav and another, 2002 ACJ 1828**, had an occasion to consider an appeal filed by the legal representatives of the deceased for enhancement of the compensation. Short facts of the reported case are as follows:

“In an accident that occurred on 07.01.1995, where the Uttam Kumar sustained injuries. He was admitted in the hospital for his treatment and he incurred expenses. He claimed compensation. The Tribunal awarded Rs.36,250/- with costs and interest. Not satisfied with the compensation, he preferred an appeal for an enhancement. Pending disposal of the appeal, he died and his aged parents were brought on record. The Division Bench of the Karnataka High Court found that the cause of action will not survive and Lrs., of the deceased claimant will not be entitled to compensation. However, the Division Bench observed that in view of the amended provisions of the Motor Vehicles Act, 1988 and the decision of the Supreme Court in **Kannamma v. Deputy General Manager, Karnataka State Road Transport Corporation** reported in **1991 ACJ 707 (Karnataka)**, referred this matter to a Larger Bench. The Full Bench which examined the issue with reference to the provisions of the Motor Vehicles Act and Indian Succession Act, 1925 and answered as follows:-

(i) A claim petition presented under Section 110-A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc. (loss to the estate) cannot, on such person's death occurring not as a result or consequence of bodily injuries sustained from a motor accident, be prosecuted by his/her legal representatives; but

(ii) A claim petition presented under Section 110-A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc. (loss to the estate) can, on such person's death occurring as a result or consequence of bodily injuries sustained in the motor accident, be prosecuted by his/her legal representatives only insofar as the claim for compensation in that claim petition relates to loss of estate of the deceased person due to bodily injuries sustained in the motor accident.”

22. In **Sakunthala v. R.Gopal** reported in **2007 (2) CTC 529**, the accident occurred on 02.08.1988. Injured made a claim for compensation. During the pendency of the claim petition, he died on 04.12.1994. Legal representatives were brought on record and they contended that despite continuous treatment, he died. They contended that death was due to the

injuries sustained in the accident. Legal representatives continued to prosecute the appeal. Amendment petition filed for enhancement of compensation has been ordered. Tribunal dismissed the claim petition, on the ground that there was no substantial proof to conclude that death was only due to the injuries sustained in the accident. Certificate issued by the Doctor, was relied on, by the claimants. After considering several decisions and on the facts and circumstances of the said case, one of us, (Hon'ble Mr. Justice S.MANIKUMAR), at Paragraphs 16 and 17, held as follows:

"16. Some of the decisions cited by the learned Counsel for appellants relating to the procedures to be followed by the Tribunal, the nature of evidence which is required for the purpose of concluding negligence on the part of the deceased are general principles of law and they are accepted. In the other cases cited by the learned Counsel for the appellant, there was a clear nexus between the injury and the consequential death.

Certificate issued by a Doctor should be based on medical records. There must be proximity with the injury and the death. There should be direct relation with the injuries and the consequential death. Claimants have to prove that the death has occurred due to the injuries by clear and cogent evidence. The cause of death should not be remote and unconnected one with the injury sustained in the accident. It should be a foreseeable one and should not be an uncommon development. If the cause of

death is integrally connected with the injury sustained and is one in the chain of causa causans, the cause of death can be attributed to the injury suffered.

17. In the instant case, there is no proximity with the injury and the death of the deceased. There is no direct relation with the injuries and the consequential death. For a period of three years, there is no medical record about the course of treatment. Medical evidence prove that the deceased was not treated for thrombosis, but all along treated only for chronic ulcer. If ever thrombosis was developed due to injuries, there would have been some complications and the Doctors, who had treated him would have certainly noted in any one of the records.

18. Under these circumstances, I am of the considered view that the Tribunal has properly assessed the evidence and has come to the right conclusion that the death of the deceased first petitioner was not due to the injury sustained in the accident. The other contentions of the learned Counsel for appellants relating to quantum and the method of computing the compensation do not deserve consideration.

In the result, the Civil Miscellaneous Appeal fails and stands dismissed. No costs. "

23. In **The Branch Manager, National Insurance Co. Ltd., v. Chennammal** reported in **2014 (1) TNMAC 740**, the accident occurred on

13.02.2004. Injured died on 15.02.2004. Going through the evidence, while considering the question, as to whether, the finding of the Tribunal that the injuries sustained by Saroja in the accident that allegedly took place on 13.2.2014, about 14.30 hours near Zuzuwadi Express Petrol bunk led to her death on 15.10.2004 is erroneous and defective?, a learned single Judge of this Court, held as follows:

"22. If all these aspects are taken in to consideration, one has to come to a necessary conclusion that by hook and crook, the first respondent herein/claimant made an attempt to make a claim against the appellant herein/insurer in connivance with the second respondent herein/owner of the offending vehicle. The first respondent herein/claimant seems to have made an attempt to earn profit out of the unfortunate death of her daughter Saroja. The Tribunal (learned Principal District Judge), without properly appreciating the evidence, has arrived at an erroneous conclusion that the first respondent herein/claimant was able to prove the petition averments regarding the accident, the identity of the vehicle and the cause of death and such erroneous finding led to the passing of the award directing the second respondent herein and the appellant to pay a sum of Rs.5,59,000/- as compensation together with an interest at the rate of 7.5% per annum from the date of filing of the MACTOP till realisation. The said finding is defective and erroneous and the same is liable to be reversed. On

re-appreciation of evidence, this court comes to the conclusion that the petition averments regarding accident, identity of the vehicle and the cause of death of Saroja have not been substantiated with sufficient and reliable evidence. Point No.1 framed by this court for decision in the appeal is bound to be answered in favour of the appellant herein and against the first respondent herein/claimant.

23. In view of the answer given to point No.1, consideration of Point Nos.2 and 3 become unnecessary and it has to be held that the first respondent herein/claimant is not entitled to recover any amount of compensation either from the second respondent or from the appellant herein."

24. In the light of the above discussion and decisions, this Court is of the view that the Tribunal erred in arriving at the conclusion that the death occurred, due to the injuries. There is no *causa causans*, which as per Black's Law Dictionary, "the immediate cause; the last link in the chain of causation". Legal representatives can at best be awarded compensation for the expenses incurred and we quantify the same, as follows:

"Fixing the monthly income of the injured as Rs.6,000/- and taking note of the injury? Elbow fracture, it could be deduced that the injured would have been immobilized, atleast for sometime, say for instance, three months. Hence, a sum of Rs.18,000/-

(Rs.6,000/- x 3), is awarded under the head, loss of income. There are no detailed medical records, except Exs.P2, Wound certificate, Ex.P3, Hospital Chit and Ex.P4, Graphic Chart, indicating that Mr.Manohar, would have sustained a fracture. Though no medical records have been filed, to prove the medical expenditure incurred, considering the nature of injuries, a sum of Rs.5,000/- under the head medical expenditure, would be just and reasonable. Rs.5,000/- is awarded for transportation. A sum of Rs.1,000/- each, is awarded under the heads, nutrition and damages to clothes. In all, a sum of Rs.30,000/- is awarded with interest at the rate of 7.5% per annum from the date of claim till deposit and the same is apportioned as hereunder.

Loss of income during the period of treatment @ Rs.6,000/- per month for three months	: Rs.18,000/-
Medical Expenses	: Rs. 5,000/-
Transportation	: Rs. 5,000/-
Nutrition	: Rs. 1,000/-
Damages to clothes	: Rs. 1,000/-

	Total : Rs.30,000/-

25. Mr.S.Arun Kumar, learned counsel appearing for the appellant-Insurance Company submitted that in M.P.No.1 of 2015 in C.M.A.No.278 of

2015, dated 16.06.2014, 50% of the award amount with proportionate interest and costs, less the statutory deposit, has been directed to be deposited and that the same has been done. Compensation awarded by the tribunal is Rs.10,66,000/- with interest at the rate of 7.5% per annum, from the date of claim till deposit. On appeal by the insurance company, compensation now determined by this Court is Rs.30,000/-. There would be a reduction of quantum of compensation by Rs.10,36,000/-.

26. In the result, the Civil Miscellaneous Appeal is allowed, as indicated above. Respondents are permitted to withdraw a sum of Rs.30,000/-, with interest at the rate of 7.5% per annum, from the date of claim, till deposit, by making necessary applications. Oriental Insurance Company Limited, appellant herein, is permitted to seek for refund of balance amount with proportionate interest. No costs. Consequently, connected Miscellaneous Petition is also closed.

(S.M.K., J.) (M.G.R., J.)
24.04.2017

Index: Yes/No
Internet: Yes/No

skm

S. MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

skm

To
The Motor Accident Claims Tribunal,
(Subordinate Judge), Arni.

C.M.A.No.278 of 2015