

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2017

CORAM

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

C.M.A.No.402 of 2015  
M.P.No.1 of 2015  
C.M.P.No.6014 of 2017

M/s.New India Assurance Co. Ltd.,  
Chennai.

... Appellant/2nd Respondent

vs.

1. S.Prema

2. Minor Karthik Madhavan

3. Minor Nivetha

(Minors are represented by  
their mother, 1st respondent)

3/Claimants

... Respondents 1 to

4. M/s.Indev Trans,  
Old No.41, New No.81,  
Thambu Chetty Street,  
Chennai-1.

4th Respondent/1st Respondent

...

Civil Miscellaneous Appeal filed under Section 173  
of the Motor Vehicles Act, against the judgment and decree, made  
in M.C.O.P.No.2281 of 2012, dated 05.08.2014, on the file of the  
Motor Accidents Claims Tribunal (VI Judge, Small Causes Court),  
Chennai.

For Appellant

: Mr.J.Chandran

For Respondents 1 to 3

Mr.F.Terry Chella Raja

:

JUDGMENT

(Judgement of this Court was made by Justice S.MANIKUMAR)

Challenging the liability fastened on M/s.New

India Assurance Company Ltd., to pay compensation of Rs.39,95,388/-, with interest at the rate of 7.5% per annum, to the respondents/claimants, instant appeal has been filed.

2. Facts leading to the appeal are that on 13.06.2007, about 19.30 Hours, when the deceased was walking along GST road, near Sivanantha Gurukulam, Kattangalathur, a lorry, bearing Registration No.TN 04 M 4059, owned by the 4th respondent and insured with the appellant-Insurance Company, driven by its driver, in a rash and negligent manner, from Chennai to Chengalpattu, hit the pedestrian, resulting in injuries. A case in Cr.No.350 of 2007, has been registered against the driver of the lorry, for the offences, under Sections 279 and 337 IPC., on the file of Maraimalai Nagar Police Station.

3. According to the claimants/respondents, after the accident, First Aid was provided in SRM Hospital and thereafter, further treatment was given in Government General Hospital, Chennai. In spite of intensive treatment, he died on 19.11.2010. Respondents/claimants have filed M.C.O.P.No.2281 of 2012, on the file of the Motor Accidents Claims Tribunal (VI Judge, Small Causes Court), Chennai, claiming compensation of Rs.16,00,000/- and restricted the same to Rs.6,00,000/-. Subsequently, pecuniary loss was sought to be enhanced to Rs.29,23,000/-.

4. The appellant-Insurance Company denied the involvement of the vehicle and consequently, liability and quantum of compensation, claimed under various heads.

5. On behalf of the respondents/claimants, three witnesses have been examined, and marked documents, Ex.P1 - FIR, Ex.P2 - Discharge Summary issued by the Hindu Mission Hospital, Chennai, Ex.P3 - Medical Bills for Rs.48,339.82, Ex.P4 - Outpatient Book, Ex.P5 - Death Certificate, Ex.P6 - Legal Heirship Certificate, Ex.P7 - ID Card of the deceased, Ex.P8 - Salary Slip of the deceased, Ex.P9 - Medical opinion by Dr.Saravanabavanandham. No oral or documentary evidence has been adduced by the appellant-Insurance Company.

6. On the basis of Ex.P1 - FIR and testimony of PW.2, brother-in-law, stated to have lodged the complaint, the Claims Tribunal held that the accident occurred, only due to the rash and negligent driving of the lorry, bearing Registration No.TN 04 M 4059, insured with the appellant-Insurance Company. Based on Ex.P9 - Medical opinion by PW.3, Dr.Saravanabavanandham, the Tribunal came to the conclusion that death was due to the injuries sustained.

7. As the deceased was a lab technician in Government General Hospital, Chennai, based on Exs.P7 and P8 - ID Card and Salary Slip of the deceased, the Tribunal fixed his monthly income as Rs.23,274/-, deducted income tax and after adding 50% of the income, under the head, "future prospects", deducted 1/3rd towards the personal and living expenses of the deceased and after applying '15' multiplier, estimated the loss of contribution to the family as Rs.37,70,388/-. That part, the Claims Tribunal has awarded Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- for loss of love and affection. Altogether, the Claims Tribunal has awarded Rs.39,95,388/- with interest at the rate of 7.5% per annum, from the date of claim, till deposit and costs.

8. Contending inter alia that the accident occurred on 13.06.2007, the claim petition has been filed, after five years from the date of accident, and three years from the date of death, i.e., on 19.11.2010 and that the original claim of Rs.6,00,000/- made in the year 2012, has been enhanced to Rs.50,00,000/- in July' 2013 and further contending inter alia that the entire claim has been fabricated for the purpose of unjust enrichment, Mr.J.Chandran, learned counsel appearing for the appellant-Insurance Company submitted that when the respondents, in the claim petition, have stated that the accident had occurred, when the deceased was walking on GST Road, near Sivanantha Gurukulam, Kattangalathur, in W.P.No.26815 of 2009, filed by the deceased himself, it was stated that the accident occurred, when he was travelling towards Chengalpattu.

9. Inviting the attention of this Court to the Accident Register, dated 13.06.2007, issued by SRM Medical College Hospital and Research Centre, Kattangalathur, learned counsel for the appellant-Insurance Company further submitted that wife of the deceased, Prema, first respondent/claimant, who had brought the injured to the hospital, has stated that that the deceased was hit by a bus. Therefore, he submitted that the accident was not caused by the lorry, bearing Registration No.TN 04 M 4059, owned by the 4th respondent and insured with the appellant-Insurance Company.

10. Referring to Sections 101 and 106 of the Indian Evidence Act, 1872, learned counsel for the appellant-Insurance Company further submitted that there is absolutely no medical records to show that the injured had taken treatment from Hindu Mission Hospital, Chennai, from 13.06.2007 to 19.11.2010. Referring to the abovesaid Sections, the appellant-Insurance Company has filed C.M.P.No.6014 of 2017, in this

appeal, for a direction to the 1st respondent/claimant and the Superintendent, Records Section, Chennai Medical College, Chennai-3, to produce the records, pertaining to admission on 13.06.2007, treatment records, service and attendance registers, medical leave particulars, medical expenses and pay certificate, till death, on 19.11.2010 of Mr.Chandrasekar, the deceased.

11. Having regard to the facts and circumstances of the case, vide order, dated 07.04.2017, we directed the Superintendent, Records Section, Chennai Medical College, Chennai-3, to produce the treatment records, entire service and attendance registers, medical leave, medical expenses and other documents of Mr.Chandrasekar, Lab Technician, Government General Hospital, Chennai. We also directed Mr.K.V.Dhanapalan, Special Government Pleader, to assist this Court.

12. Responding to the above, medical records have been produced. We have perused the original medical records submitted by the Senior Medical Records Officer, Rajiv Gandhi Government General Hospital, Chennai. Medical records reveal that Chandrasekar was admitted in Government General Hospital, Chennai-3, on 19.10.2010 at 01.02 P.M. Diagnosis on 19.10.2010, reads that, "DCLD/T2DM/RHD, MS".

13. Problem Chart, dated 23.10.2010 indicates that the Doctors have diagnosed that the deceased had Mild MS Rheumatic heart disease and alcoholic DCLD. He was a chronic alcoholic; alcoholic hepatitis; known diabetic Type II; he was irregular in treatment; and treated in a private hospital. In Government Hospital, it has also been diagnosed, as follows:

- "(1) Type 2DM (Sugar Down)
- (2) RHD - Mild MS/Mild MR/No PHT
- (3) Alcoholic liver disease  
(Decompensated) with senae hyperbilirubinemia (TB - 41.5)
- (4) Hypoproteinemia with A:G reversal
- (5) Right Pneumonitis (Cepts (+) Cough i  
expe (+))
- (6) Throm bocytopenia
- (7) Prolonged PT/INR (PT - 25.8, INR  
2.06) "

14. Reading of the medical records further shows that the Doctor has diagnosed that there was RHD, severe alcoholic hepatitis with decompensation, coagulopathy, hepatorenal syndrome and injective diarrhea. On 19.11.2010, Doctor has given the death summary and the same is extracted hereunder:

"Chandrasekar, 40/m, admitted C/o. abdominal pain, abdominal distension. Pt is a RHD, MS/T2 DM/RHD Streptococcal phemenio. O/E. Icteric, CVS-S1 S2 (+), RS, NVBS (+). Pt. informs freefluid (+). Blood was sent for routine investigation, TC was elevated, Bilirubin elevated, Pt DNR/DCLD was prolonged, Pt. was diagnosis and treated as the case of hepatic encephalopathy/hepatic coagulopathy/T2 DM. Despite treated, pt. condition worsened, his RTT was elevated, went in for acute kidney injury. Pt. was treated with pritoneal dialysis, IVF, antibiotic, blood transfusion, FFP - Despite treatment, pt. condition continued to worsen, went in for cardio respiratory arrest. In respect of the best regeneration measure, pt. could not revived and declared died on 19.11.2010 at 4.45 a.m."

Thus, from the death report, we find that there is absolutely no material to indicate that Chandrasekar was treated for the alleged injuries, sustained by him, in the hospital.

15. Entire case papers in W.P.No.26815 of 2015, were called for. As per the supporting affidavit in W.P.No.26815 of 2015, filed by the deceased, for a Writ of Mandamus, directing the Superintendent of Police, Kancheepuram, 1st respondent herein, to furnish him, the details of the lorry bearing Registration No.TN 04 M 4059, viz., its Insurance Certificate, Registration Certificate, Driving Licence of the driver, Fitness Certificate, Permit and FIR copy in Cr.No.350 of 2007, on the file of the second respondent, viz., the Inspector of Police, D-6 Maraimalai Nagar Police Station, Maraimalai Nagar, Kancheepuram District, the deceased was travelling towards Chengalpattu.

16. In the Accident Register, dated 13.06.2007, issued by SRM Medical College Hospital and Research Centre, Kattangalathur, wife of the deceased, Prema, has stated that that the deceased was hit by a bus. In the claim petition, the respondents have stated that when the deceased was walking in GST Road, near Sivanantha Gurukulam, Kattangalathur, a lorry, bearing Registration No.TN 04 M 4059, owned by the 4th respondent and insured with the appellant-Insurance Company, dashed against him and that he was taken to SRM Hospital, for first aid and thereafter, referred to Government General Hospital, Chennai.

17. According to the complainant, brother-in-law, he saw Chandrasekar, badly injured. After the accident, the driver of the abovesaid lorry, stepped down from the same and ran away. PW.2, has adduced evidence that the lorry, which came

from Tambaram to Chengalpattu, dashed against the deceased. When Chandrasekar, himself had filed W.P.No.26815 of 2015, contending inter alia that the accident occurred, when he was travelling towards Chengalpattu and sustained injuries, the claim on the basis that the lorry had caused negligent, is nothing but false. When the deceased had filed a solemn affidavit to this Court that the accident occurred, when he was travelling to chengalpattu, by contending that the accident occurred, while he was walking on GST Road, claim has been preferred.

18. From the reading of Ex.P1 - FIR, it could be seen that brother-in-law of the deceased had lodged a complaint on 20.11.2011, wherein, he has stated that the accident occurred on 13.06.2007. Injured was given first aid in SRM Hospital and thereafter, taken treatment in Government General Hospital, Chennai. As stated supra, the injured was brought to SRM hospital by the 1st respondent/claimant, wife of Chandrasekar and as per her declaration, he was hit by a bus.

19. As rightly pointed out by the appellant-Insurance Company, after five years, from the date of accident and two years after death, claim petition has been filed, concocting a story that due to the injuries, Chandrasekar died in the hospital. Unfortunately, PW.3, Doctor, has adduced evidence to the effect that due to continuous medication for three years, there is possibility of death.

20. On the aspect, as to whether, Chandrasekar had taken any treatment for epilepsy and we have taken the assistance of the Civil Surgeon, High Court Dispensary. Going through the medical records, Doctor has stated that there is no specific medicine prescribed for epilepsy. We do not accept the testimony of PW.3, Doctor. We only observe that those, who give false evidence, dehors medical records, may at one stage be called to answer a charge for perjury. Courts/Tribunals dealing with public money, should exercise care, while assessing evidence. In cases, where documentary evidence, relating to avocation, such as, mason, construction worker or any semi skilled job or labourer, it is different. But in cases, where a plea of death, due to injuries is made, there should be some medical records to connect both injuries and death, in proximity and not remotely. True copy of the medical records produced by the learned Special Government Pleader shall form part of the record in this appeal.

21. Respondents/claimants have concocted a case, to claim compensation. In the absence of any documentary evidence, connecting the injuries to death, the Claims Tribunal has grossly erred in arriving at the conclusion that death was

due to the injuries, solely based on the testimony of PW.3, Doctor. Proceedings before the Claims Tribunal may be summary. But that does not mean that scrutiny of evidence, by Courts/Tribunal should also done summarily or mechanically. Facts pleaded should be proved, with evidence, not only on the basis of oral testimony, but the same should be corroborated, wherever required. As the claim of the respondents/claimants is now found to be false, appeal filed by the appellant-Insurance Company, deserves to be allowed, reversing the entire judgment and decree.

22. Hence, the Civil Miscellaneous Appeal is allowed. It is represented that 50% of the award amount with proportionate accrued interests and costs, have already been deposited. Therefore, the appellant-Insurance Company is permitted to withdraw the amount, lying in the court deposit. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To

VI Judge, Small Causes Court,  
The Motor Accidents Claims Tribunal,  
Chennai.

+1cc to Mr.J.Chandran, Advocate, S.R.No.22932

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C.M.A.No.402 of 2015  
M.P.No.1 of 2015  
C.M.P.No.6014 of 2017

SV(CO)  
RS(11/05/2017)