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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

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THE HON'BLE DR.JUSTICE S.VIMALA

C.M.P. No.15289 of 2001

in

C.M.A. SR No.28906 of 2001

M/s.United India Insurance Company Ltd.,
No.66-68, Gandhi Road,
Kancheepuram.

... Appellant/2nd Respondent

Versus

1. Gajalakshmi
2. Chithra
3. Murali
4. Suresh
5. Jani Basha ... Respondents/Petitioners/1st respondent

Prayer in C.M.P.No.15289 of 2001 : Petition filed under Section 149 C.P.C, seeking condonation of delay of 167 days in paying the deficit court fees.

Prayer in C.M.A.SR.No.28906 of 2001 : Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 29.09.2000 made in M.C.O.P.No.260 of 1997 on the file of the Motor Accident Claims Tribunal (Sub-Judge) at Kancheepuram.

For Appellant : MS.N.Mala

JUDGMENT

In the petition to condone the delay of 167 days in paying the deficit court fees, notice was ordered by this Court on 03.10.2001. However, after ordering of notice, no progress having been made, fresh notice was once again ordered on 24.09.2008. However, inspite of the same, no steps have been taken, once again fresh notice was ordered on 8.2.2017. The case having remained in the same stage since 2001, this Court called for the records in the matter on 28.8.2017 to ascertain details relating to the death of the deceased.

2. The records having been received by this Court and on a perusal of the same, this Court is of the considered view that it would suffice to deal with the matter on merits in the



present stage itself rather than condoning the delay and numbering the appeal, which will only bruke further delay.

3. It is relevant to point out that the claimant has also not filed any appeal, so far and only in case this Court decides to interfere with the quantum awarded and considers reduction of compensation, hearing the respondents is necessary. Therefore, this Court proceeds to analyze the issue on merits.

4. It is seen from the records that one Parthasarathy sustained injuries in the accident that occurred at about 8.45 a.m. on 05.11.1996 near Kanchipuram District Collector's office. He filed a claim petition claiming compensation of Rs.5,00,000/-. The claimant was said to be earning a sum of Rs.10,000/- by running a pharmacy.

5. The accident in the present case is said to have occurred when the claimant was a pedestrian near the bus stop at the Office of the District Collector at Kanchipuram. The claimant was hit by the vehicle belonging to the 1st respondent and in the said accident, the claimant suffered grievous injuries.

6. The claimant, who was initially injured and later succumbed to the injuries, initially suffered fracture below the right knee and he was admitted at the Government Hospital, Kanchipuram. However, at the request of the claimant, he was discharged but once again he was admitted on 18.11.96. Since the claimant suffered fracture, the records reveal that he took native treatment, popularly known as "Puthur Bandage". However, inspite of the same, he was not able to move from the bed. The claimant succumbed to the injuries and died on 12.12.99. Later his wife Gajalakshmi and his children were impleaded themselves as claimants.

7. Even while alive the then claimant, Parthasarathy, examined himself as PW1. The Doctor, who treated the claimant was examined as PW2. However, after the death of Parthasarathy, his wife was examined as PW3. P.W.2, Dr.Thiagarajan was once again examined as P.W.4 to speak about the cause of death. To substantiate their case, the claimants marked 17 documents. However, neither oral nor documentary evidence was placed on the side of the respondents.

8. The Tribunal on consideration of materials came to the conclusion that the accident took place due to the rash and negligent driving by the 1st respondent and, therefore, the 1st respondent, as tortfeasor and the 2nd respondent as the insurer, were both made jointly and severally liable to compensate the claimants.



9. At the time of the when the then 1st claimant Parthasarathy, since deceased, filed the claim petition, he has claimed Rs.2,00,000/- as compensation. Subsequently, after the death of the said claimant, petition was filed claiming enhanced compensation in a sum of Rs.5,00,000/- and the said petition for amendment was also allowed.

10. The deposition of the then injured claimant reveals that he suffered fracture above the ankle and below the knee. He has also stated that he suffered fracture in the hip as well. It is the further deposition of the then injured claimant that he regained consciousness only after receiving native treatment at Puthur. Even though the Doctor had suggested surgery, the claimant was afraid that age may not permit him to undergo the surgery. Therefore, he was underwent native treatment. The evidence of the deceased further reveals that seven times Bandage was applied and for each time, he paid Rs.1500/- to the Doctor. It is his further deposition that the injuries sustained by him prevented him from either standing or walking. Due to the said injuries and its impact, the deceased was not able to continue his avocation. The deceased further deposed that he had incurred medical expenses to the tune of about Rs.70,000/- and that expenses towards transportation was to the extent of Rs.40,000/-.

11. It is the further deposition of the deceased that the injuries sustained by him necessitated the help of an attendant. The medical bills in respect of the treatment taken has been submitted as documentary evidence.

12. The Doctor, who assessed the permanent disablement has deposed that there was bending of bones in the right leg and there was swelling and malunion, tightening of muscles and restriction in movement and that he assessed the disablement at 70%.

13. P.W.3, the wife of the deceased, has deposed that the deceased was frequently suffering from fever due to the injuries sustained by him. She has further deposes that the deceased was taking continuous treatment and during one such spell during December, 1999, when the deceased was being taken to the hospital, he collapsed and died on the way to the hospital and, therefore, no post-mortem was conducted and, hence, no certificate to that effect has been marked.

14. The Doctor, PW2, who was again examined as PW4 has opined that death had occurred on account of Septecemia due to the injuries sustained by the deceased.



15. Before the Tribunal, the claimants contended that death was only on account of the injuries sustained and therefore, the legal heirs are entitled to compensation, which was refuted by the insurance company contending that death was not on account of the injuries sustained and, therefore, the legal heirs are not entitled to compensation.

16. The Tribunal has taken into consideration, the following for deciding the compensation payable to the claimants. The Tribunal taking into consideration the fact that no post-mortem certificate has been produced to show the cause of death and further taking note of the fact that though the accident had happened on 05.11.1996, however, the deceased died after a period of three years i.e., on 12.12.1999 and taking further note of the document which has been filed by the claimants to show that deceased himself has been practicing as a Doctor for allopathy medicine and BMP medicine held that the death cannot be said to be on account of the injuries sustained by the deceased and, therefore, as claimed by the claimants, compensation towards fatality cannot be awarded. However, the Tribunal went on to hold that the injuries sustained by the deceased had not been disputed and that the nature of injuries sustained by the deceased clearly disclose that the deceased would definitely have suffered loss of earnings during the period from the date of injury till his death, which almost spans a period of three years. The Tribunal has given the finding based on the deposition of the doctor relating to the injuries sustained by the deceased and the continuity of the treatment taken by the deceased for the injuries sustained by him. In that view of the matter, the Tribunal proceeded to quantify the compensation towards the injury sustained by the deceased, which would stand payable to the legal heirs of the deceased upon his death.

17. The Tribunal, based on the materials available on record concerning the avocation of the deceased, fixed the daily income of the deceased at Rs.150/-. Accordingly, the Tribunal quantified the monthly income at Rs.4,500/- and the annual income was estimated at Rs.54,000/- (Rs.4,500 x 12). Since the deceased was suffering continuously over the period of three years since the date of the accident, the Tribunal quantified the compensation towards loss of earnings at Rs.1,62,000/- for a period of three years. Though the above fixation of income at Rs.150/- per day is said to be on the higher side, however, a careful perusal of the finding and the compensation awarded by the Tribunal, clearly disclose that the Tribunal has taken all the aspects into consideration and has arrived at a conclusive finding, which in the considered opinion of this Court, are based on rational and logical reasoning and the amount awarded



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towards loss of earnings during the three year period cannot be said to be excessive. The Tribunal has taken into consideration all the aspects in detail and has quantified the compensation, which is just and fair and cannot be said to be excessive and, therefore, warrants no interference.

18. Insofar as the compensation under the other heads are concerned, though the Tribunal has awarded a sum of Rs.5,000/- towards loss of consortium and a sum of Rs.2,000/- towards funeral expenses. The above amount are meagre and cannot be said to be excessive and, therefore warrants no interference. Similarly, the amount of Rs.10,000/- awarded towards Transport expenses is also reasonable considering the fact that the claimant has been taking continuous treatment for the injuries sustained by him. Definitely the injuries sustained would have necessitated the use of transport for commuting purposes and, therefore the award under the said head is reasonable and cannot be said to be excessive. Accordingly, the same is also confirmed. Medical expenses awarded at Rs.600/- is also confirmed. In all the Tribunal has awarded a sum of Rs.1,79,600/- rounded off to Rs.1,80,000/-, which is quite reasonable and warrants no interference. Accordingly, the compensation awarded by the Tribunal is confirmed.

19. Though an ancillary contention is raised by the learned counsel for the appellant that the Tribunal ought to have deducted 1/3rd towards the personal expenses of the deceased, however the said contention deserves to be rejected for the simple reason that the calculation of compensation is based on the injuries sustained by the claimant and that too during his life span. No quantification has been made towards fatality compensation. In such view of the matter, the question of making any deduction towards personal expenses does not arise.

20. For the reasons aforesaid, the grounds raised being devoid of merits, this Court is not inclined to entertain the appeal by condoning the delay, which would be nothing but prolonging the disposal of the matter. In such view of the matter, the miscellaneous petition is dismissed. Consequently, the civil miscellaneous appeal SR is rejected.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar



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To

1. Motor Accident Claims Tribunal cum Sub Court,
Kanchepuram.
2. The Section Officer, (2 copies)
V.R. Section,
High Court, Madras - 104.

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nr 07/05/2018