



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANC.M.A. (MD) No.1148 of 20161.Rengammal
2.Govindammal

... Appellants

Vs.

1.Thavamani
2.M/s.United Insurance
Company Limited,
EVR Road, Puthur,
Trichy.

... Respondents

Prayer: Appeal filed under Section 173 of M.V.Act, 1988, to set aside the order and decree dated 15.02.2013 and made in M.C.O.P.No.1206 of 2004 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Trichirappalli.

For Appellants

: Mr.R.Aravindraj

For Respondents

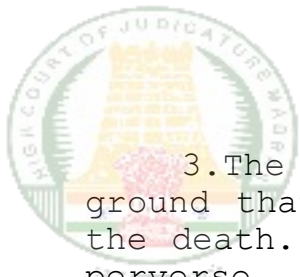
: Mr.J.S.Murali for R2

No Appearance for R1

JUDGMENT

Heard the learned counsel on either side.

2.One Periyannan, was standing outside the tea shop near Thiruvellarai Bus stop on 01.02.2002 at about 5.45 P.M. A van belonging to the first respondent and insured with the second respondent herein was driven in a rash and negligent manner and dashed against him. He fell down and suffered head injuries. Crime No.77 of 2002, was registered, on the file of the Manachanallur Police Station. FIR was registered pursuant to the intimation from the hospital. Originally, the out post station attached to the Trichy Joint Hospital registered the case. The driver of the offending vehicle was charge sheeted and he pleaded guilty and paid fine in S.T.C.NO.894 of 2003. A mere look at the accident register/Ex.P2 would show that the said Periyannan suffered head injuries. A mere look at Ex.P7/case sheet would show that the condition of the deceased was quite bad. He was in the Government hospital, Trichy for close to a month. He appears to have left the hospital without any intimation for taking private treatment. He ultimately passed away on 05.07.2002. The claimants who are the wives of the deceased filed M.C.O.P.No.1206 of 2004, on the file of the Motor Accident Claims Tribunal, Trichy. The Tribunal dismissed the claim petition with cost by order dated 15.02.2013. Challenging the same, this appeal has been filed.



3.The Tribunal chose to dismiss the claim petition on the ground that no nexus has been established between the accident and the death. I am of the view that the reasoning of the Tribunal is perverse. It is beyond dispute that the accident occurred on 01.02.2002. The deceased Periyannan was injured in the said accident. He was admitted in the Government Hospital, Trichy. Intimation was sent to the out post police Station. FIR was registered. The case was transferred to Manachanallur Police Station. Investigation was under taken. Final report was filed. The driver of the offending vehicle pleaded guilty in STC.No.894 of 2003. The case sheet of the deceased was marked as Ex.P7. It clearly shows that the condition of the deceased was serious. He was an inpatient from 01.02.2002 to 26.02.2002. He appears to have left without any intimation. It clearly shows that even on 26.02.2002, the deceased was not discharged. The doctor who treated the deceased was examined as PW2. He had deposed that the death could have possibly occurred on account of the injuries suffered in the accident. Merely because he gave a contradictory answer in the cross examination that cannot be taken an advantage of. It is not necessary that the post mortem should have been performed to prove the nexus between the accident and death. I am of the view that the death of Periyannan occurred only due to the injuries suffered in the accident on 01.02.2002.

4.It is relevant to note here that the deceased was aged about 64 years. When a person who has aged 64 years suffers injuries of this nature it is likely to cause death. The deceased passed away on 05.07.2002. There is a gap of hardly five months separating the date of accident and the date of death. It is unfortunate that the Tribunal not only disbelieved the case of the claimant but chose to dismiss the petition with cost. It is quite possible that the case was not projected by the claimants effectively. However when the records are before the Court a duty is cast upon the Tribunal to independently decide the issue and pass appropriate orders. Any claim arising out of an accident will have to be handled with sensitivity.

5.Now comes to the question of finalising the quantum of compensation payable to the claimants. The deceased was aged 64 years. The relevant multiplier would be 7. There is nothing on record to show that the deceased was an earning member. No income proof was filed. Even as per the claim petition, he was earning Rs.3,000/- per month. The same can be accepted as such. $\frac{1}{3}^{\text{rd}}$ can be deducted towards personal expenses. That would leave a sum of Rs.2,000/- for the family. The pecuniary loss can be quantified at Rs.1,68,000/-. This can be rounded off to Rs.1,70,000/-. For loss of consortium a sum of Rs.40,000/- can be awarded. Though, the treatment was given in a Government Hospital from 01.02.2002 till 26.02.2002, it was deposed that later he took treatment in a private hospital. Hence a sum of Rs.25,000/- can be awarded under that head. Further a sum of Rs.15,000/- is to be awarded towards funeral



expenses. In all a sum of Rs.2,50,000/- is awarded. The claimants are entitled to Rs.1,25,000/- each with interest.

6. Therefore, the award dated 15.02.2013 and made in M.C.O.P.No.1206 of 2004 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Trichirappalli, is modified accordingly.

7. The second respondent is directed to deposit the compensation amount of Rs.2,50,000/- with interest at the rate of 7.5% per annum with costs to the credit of M.C.O.P.No.1206 of 2004, dated 15.02.2013, on the file of the Motor Accident Claims Tribunal, I Additional District Court, Trichirappalli,, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this judgment from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the appellants/claimants are entitled to withdraw the same, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal. The claimants are entitled to Rs.1,25,000/- each with interest.

8. This Civil Miscellaneous Appeal is allowed accordingly. No costs.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The I Additional District Judge,
The I Additional District Court
The Motor Accident Claims Tribunal,
Trichirappalli.

2. The Record Keeper, Vernacular Section, **(2 COPIES)**
Madurai Bench of Madras High Court, Madurai.

3. Mr. Thavamani,
W/O Ariyaputhiran,
No.104A, High School Road,
Thuraiyur, Trichy.

+1CC TO Mr. J.S. Murali, Advocate, SR No. 92329

C.M.A. (MD) No. 1148 of 2016
11.12.2017

tsg

MS/SV-MMS/SAR-2/26.04.2018/3P.6C

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