



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.925 of 2013

1.Sumathi
2.Anithababy

... Appellants/Petitioners

**(Cause Title is accepted vide order dated
13.03.2013 made in M.P(MD)No.1 of 2009 in
C.M.A(MD) SR.No.4112 of 2009.)**

Vs.

1.V.Lakshmi

2.The Branch Manager,
The New India Insurance Company Limited,
Mettupalayam,
Coimbatore District.

3.Thangamani @ Gopi

... Respondents/ Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 15.10.2008 made in M.C.O.P.No.17 of 2004 by the Motor Accident Claims Tribunal - cum - Chief Judicial Magistrate, Trichy.

For Appellants : Mr.K.P.Narayanakumar

For Respondents : Mr.K.Murugesan for R.2

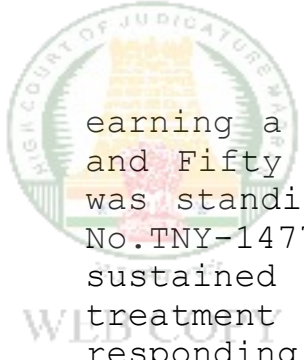
R.1 - Dispensed with.

R.3 - Left.

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants/claimants, against the dismissal of the claim petition filed by them for the death of one Sasikumar, aged 19 years, working as Helper in Kurunji Borewell Compressor Lorry, allegedly



earning a sum of Rs.3,750/- (Rupees Three Thousand Seven Hundred and Fifty only), in the accident occurred on 11.04.1998, when he was standing before Ganesh Workshop, a lorry bearing Registration No.TNY-1477 driven by one Manickam ran over the deceased and he sustained grievous injuries all over his body and he was taking treatment between 11.04.1998 and 15.04.1998, however, without responding to the treatment given to him, he died. Therefore, the claim petition was filed.

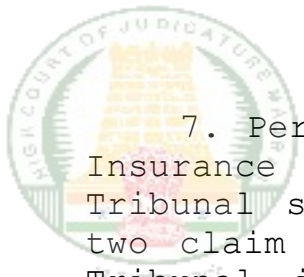
2. On contest, the Tribunal, based on the pleadings, oral and documentary evidence, found that the appellants/claimants earlier filed a claim petition in M.C.O.P.No.197 of 2001 on the file of the Motor Accident Claims Tribunal - Fast Track Court, Pudukkottai, for the same accident and hence, dismissed the present claim petition filed by the appellants/claimants. Aggrieved over the same, the appellants/claimants filed the present appeal.

3. Heard Mr.K.P.Narayanakumar, learned Counsel for the appellants/claimants and Mr.K.Murugesan, learned Counsel for the second respondent-Insurance Company.

4. The first respondent/owner of the offending vehicle remained exparte before the Tribunal and hence, notice to the first respondent is dispensed with, in view of the Full Bench judgment of Madhya Pradesh High Court in **Mrs. Jamunabai v. Chhote Singh** reported in **I (2004) ACC 190 (FB)**.

5. The Tribunal, based on the pleadings, oral and documentary evidence, found that the appellants/claimants earlier filed a claim petition in M.C.O.P.No.197 of 2001 on the file of the Motor Accident Claims Tribunal - Fast Track Court, Pudukkottai, for the same accident and hence, dismissed the present claim petition in M.C.O.P.No.17 of 2004 on the file of the Motor Accident Claims Tribunal - cum - Chief Judicial Magistrate, Trichy, filed by the appellants/claimants.

6. It is contended by the learned Counsel for the appellants/claimants that though a claim petition was earlier filed by one Vellaichamy along with the first appellant herein in M.C.O.P.No.197 of 2001 before the Motor Accident Claims Tribunal - Fast Track Court, Pudukkottai, the said claim petition was dismissed for default on 18.11.2003 and the Tribunal did not award any compensation to the claimants therein and in such an event, the Tribunal ought not to have dismissed the present claim petition filed by the appellants herein and rejected their claim for compensation for the death of the said Sasikumar and moreover, the earlier claim petition was not restored so far and hence, he prayed for allowing this appeal.



7. Per contra, the learned Counsel for the second respondent-Insurance Company supported the dismissal order passed by the Tribunal stating that the claimants had not justified in filing two claim petitions for one and the same accident and that the Tribunal is correct in rejecting the claim of the appellants herein and therefore, he prayed for the dismissal of this appeal.

8. I have considered the rival submissions and perused the materials available on record.

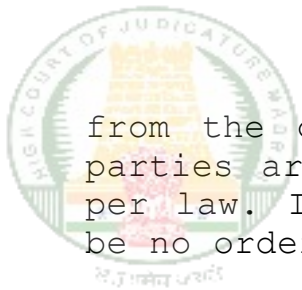
9. It is not in dispute that the deceased Sasikumar lost his life in the accident occurred on 11.04.1998 and the appellants/claimants are the legal representatives of the deceased Sasikumar. Though the Tribunal found that one Vellaichamy filed a claim petition along with the first appellant herein seeking compensation for the death of the said Sasikumar, the said claim petition was admittedly dismissed for default and the same was not restored at all. Further, it is stated by the appellants/claimants that a Memo had already been filed before the Tribunal concerned that a bogus claim was made by the said Vellaichamy. In such circumstances, the core question to be decided, is as to whether the finding of the Tribunal that the present claim petition filed by the appellants herein/claimants is sustainable?

10. The provisions of the Motor Vehicles Act, 1988 are benevolent in nature and the legal representatives of the victims in a motor accident should be appropriately compensation and it is well settled law that the claim for compensation in cases of motor accidents be dealt with on humanitarian grounds.

11. Admittedly, in the earlier claim petition in M.C.O.P.No.197 of 2001 before the Motor Accident Claims Tribunal - Fast Track Court, Pudukkottai, filed by one Vellaichamy and the first appellant herein, no compensation was awarded by the Tribunal and the said claim petition was dismissed for default on 18.11.2003. Therefore, the Tribunal is not justified in dismissing the present claim petition filed in M.C.O.P.No.17 of 2004 on the the Motor Accident Claims Tribunal - cum - Chief Judicial Magistrate, Trichy and accordingly, this Court finds that the matter should be remitted to the Tribunal for fresh consideration.

12. For the foregoing reasons, this Court is of the view that the appellants/claimants should be given one more opportunity to prove their claim before the Tribunal in accordance with law.

13. In the result, this Civil Miscellaneous Appeal is allowed and the award dated 15.10.2008 passed in M.C.O.P.No.17 of 2004 by the Motor Accident Claims Tribunal - cum - Chief Judicial Magistrate, Trichy, is set aside and the matter is remitted to the Tribunal for fresh consideration in accordance with law and the Tribunal shall dispose of the same within a period of six months



from the date of receipt of a copy of this judgment. Both the parties are at liberty to adduce evidence before the Tribunal as per law. In the facts and circumstances of the case, there shall be no order as to costs.

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/True Copy/

Sd/-
Assistant Registrar(CSI)

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal - cum -
Chief Judicial Magistrate,
Trichy.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC TO MR.K.MURUGESAN,ADVOCATE,SR NO.14960

+1 CC TO MR.K.P.NARAYANAKUMAR,ADVOCATE,SR NO.15234

rsb

MAS/MR/SAR4:19.04.2017:4P-5C

C.M.A. (MD) No.925 of 2013
15.03.2017