



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.09.2017**

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**C.M.A(MD)No.406 of 2011
AND
M.P(MD)No.1 of 2011**

1.Ganesan (Died) ... Appellant/1st respondent
2.Jeyamani
3.Hemavathi
4.Akila
5.Kalaiselvi
6.Shanthi
7.Sathish Kumar ... Appellants

(Appellants 2 to 7 brought on record as
LRS of deceased sole appellant vide Court
order dated 22.07.2016 made in
M.P. (MD) No.1 to 3 of 2014 in C.M.A. (MD) No.406 of 2011).

Vs.

1.Palaniyayee
2.Shanmugam
3.Nagamuthu
4.Meena
5.Lakshmi
6.Ravichandran
7.Murugesan
8.Rajagopal ... Respondents / Petitioners

9.The Divisional Manager,
National Insurance Company,
Trichy. ... Respondent/2nd Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the order dated 09.11.2010 made in M.C.O.P.No.202 of 2002 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Pudukottai.

For Appellants : Mr.PT.S.Narendravasan

For R1, R2 and R4,R5,R7,R8 : Mr.Roy Samuel

For R3 : Mr.V.Selva

For R6 : Mr.J.S.Murali

**J U D G M E N T**

This Civil Miscellaneous Appeal has been filed by the appellant as against award of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Pudukottai made in M.C.O.P.No.202 of 2002, dated 09.11.2010.

2. It is a case of fatal accident, which took place on 23.06.1978 at Pudukottai to Trichy Road at 6.30 a.m.

3. It is the case of the claimants before the Tribunal that when the deceased by name Silamban @ Chidhambaram was riding his bicycle on Trichy to Pudukkottai main road, the ambassador Car bearing registration No.MSS 6887, which was driven in a rash and negligent manner, which came behind the deceased, had hit against the deceased and caused the accident and in the said accident, the deceased sustained injuries and thereafter, succumbed to the injuries.

4. The claimants filed an application in in M.C.O.P.No.202 of 2002 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Pudukottai.

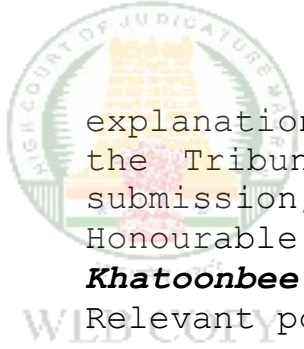
5. Before the Tribunal, the claimants examined one witness as P.W.1 and marked five documents as Exs.P1 to P5. On the side of the Insurance Company, one witness was examined as R.W.1 and two documents were marked as Ex.R1 and Ex.R2.

6.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the appellant and claimants and also appreciating the evidences on record, held that the accident occurred only due to the rash and negligent driving of the ambassador car. Since the Insurance Policy was not in force, the Tribunal held that the Insurance Company is not liable to pay compensation amount and the owner of the vehicle alone is liable to be pay the compensation amount and awarded compensation of Rs.4,54,000/-.

7.Against which, the owner of the vehicle has filed this present appeal challenging the liability.

8. Since the appellant/owner of the vehicle died, his legal heirs/present appellants were brought on record to contest the case.

9.The learned counsel appearing for the appellants submitted that the Tribunal erred in entertaining the claim petition after a period of 24 years from the date of accident, when there is no



explanation for the said delay and therefore, the award passed by the Tribunal is liable to be set aside. In support of his submission, the learned counsel has relied on the judgment of the Honourable Supreme Court of India in **Purohit and Company vs. Khatoonbee and others** reported in **2017(1) TN MAC 602 (SC)**. Relevant portion of the said judgment reads as follows:

13..... We are of the considered view, that a claim raised before the Motor Accident Claims Tribunal, can be considered to be genuine, so long as it is a live and surviving claim. We are satisfied in accepting the declared position of law, expressed in the judgments relied upon by the learned counsel for the appellant. It is not as if, it can be open to all and sundry, to approach a Motor Accident Claims Tribunal, to raise a claim for compensation, at any juncture, after the accident had taken place. The individual concerned, must approach the Tribunal within a reasonable time.

15. Having given our thoughtful consideration to the justification expressed at the behest of the respondents, for approaching the Tribunal, after a period of 28 years, we are of the view, that the explanation tendered, cannot be accepted. Undoubtedly, the claim (pertaining to an accident which had occurred on 2.2.1977), in the facts and circumstances of the instant case, was stale, and ought to have been treated as a dead claim, at the point of time, when the respondents approached the Tribunal by filing a claim petition, on 23.02.2005.

16. In view of the reasons recorded hereinabove, we hereby set aside the impugned order dated 7.7.2015, and allow the instant Appeal, by holding that the claim raised by the respondents before the Motor Accident Claims Tribunal, was not a surviving claim, when the respondents approached the said Tribunal.

10. The learned counsel for the respondents/claimants submitted that there is no error in entertaining the claim petition after a period of twenty four years as there is no time limit for filing the claim petition in motor accident cases and therefore, the award of the Tribunal does not warrant interference at the hands of this Court. In support of his submissions, the learned counsel relied on a judgment of this Court in **C.M.A.Nos.1074 and 1532 of 2014, dated 25.08.2014**, wherein this Court has held as follows:



"14. The material on record discloses that the accident had occurred on 23.06.1990. The claim petitions have been filed in the year 2005. By that time, 16 years have lapsed, from the date of accident. But, the claimants have not filed application to condone the delay in filing claim petition. Hence, the Tribunal has dismissed the claim petition solely on the ground that there is a delay of 16 years in filing claim petition but, the claimants have not filed application to condone the delay in filing the claim petition. But, as per the decision of Jharkhand High Court, after the omission of sub-section (3) of Section 166 w.e.f.14.11.1994, there is now no limitation for filing claim application before the Tribunal in respect of death or injury caused by a Motor Vehicle Accident. This Judgment is squarely applicable to the facts of this case. Hence, I am of the opinion that even without the condone delay application, the claim petitions filed by the legal representatives / injured is maintainable. Therefore, the finding rendered by the Tribunal in dismissing the claim petition on the ground of limitation is hereby set aside."

11. Heard the submissions made on either side and perused the materials available on record.

12. A perusal of the records shows that the claimants have filed the claim petition after a period of 24 years. But, the claimants have not filed any application for condonation of delay explaining the reasons for the delay in filing the claim petition. Therefore, the judgment relied on by the learned counsel for the appellants is squarely applicable to the facts of the present case.

13. In view of the above, this Court is of the view that the Tribunal ought not to have proceeded with the claim petition filed by the claimants after a lapse of 24 years. Therefore, the award passed by the Tribunal is liable to be set aside.

14. In the result,

(i) This Civil Miscellaneous Appeal is allowed and the award dated 09.11.2010 made in M.C.O.P.No.202 of 2002 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Pudukottai, is hereby set aside; and

<https://hcservices.ecourts.gov.in/hcservices/>

(ii) The appellants are permitted to get back the deposited



amount, if any.

No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To,
The Judge,
Motor Accident Claims Tribunal,
(Chief Judicial Magistrate, Pudukottai)

Copy to:
The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.PT.S.Narendravasan, Advocate in SR.No.77909

+1cc to Mr.J.S.Murali, Advocate in SR.No.78149

pm

AE/KK/SAR3/03.10.2017/5P/5C

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