

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1031 of 2018
and
C.M.P.No.8332 of 2018

The New India Assurance Company Ltd.,
45, Moore Streets,
Chennai 600 001. Appellant/2nd Respondent

Vs

1.Magamayi

2.Jayagopal

3.Magalakshmi

4.Durgadevi Respondents/Claimants

5.Sethupathi

(5th respondent set exparte in the lower Court.
Hence, given up) Respondents/Ist Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act against the Award and Decree dated 20.02.2018 passed in MCOP.No.279 of 2014, on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1, Motor Accident Claims Tribunal) Small Causes Court, Chennai.

For Appellant :Mr.R.Sivakumar

For Respondents:Mr.K.Prem Kumar (for R1 to R4)

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company, against the award of Rs.15,39,000/- as compensation for the death of one Mr.V.Lakshmanan, aged about 52 years, self employed, allegedly earning a sum of Rs.15,000/- per month in

the accident, which occurred on 08.03.2007, when the victim was riding his motorcycle, which was hit by a lorry belonging to the 5th respondent and insured with the appellant.

2.Mr.R.Sivakumar, learned counsel appearing for the appellant would submit that the accident occurred on 08.03.2007, due to which, the victim sustained injuries and after taking treatment, he became alright. After a period of three years, the victim died on 01.03.2010 and therefore, there is no connection between the cause of death and the injuries sustained by the victim.

3.Further, he would submit that there is no post mortem report marked by respondents 1 to 4/claimants to show that because of injuries sustained by the victim, in the accident, he died. In those circumstances, the tribunal should have held that there is no connection between the injuries sustained by the victim and the death. He would further submit that the Tribunal without seeing pros and cons of the case, mechanically followed the method as adopted in the case of death and awarded a sum of Rs.15,39,000/-, taking Rs.8,000/- as monthly income and applying the multiplier of "13". He would submit that in the absence of any clinching evidence, connecting the injuries and cause of death, it is not possible to give any ground to the legal representative of the deceased.

4.On the other hand Mr.K.Premkumar, learned counsel appearing for the claimants/respondents 1 to 4 submits that even though there was no post mortem report, the medical records, especially discharge summary given by Apollo Hospital as Ex.P.3 would undoubtedly make it very clear that the deceased sustained serious injuries and thereafter, he had taken treatment and inspite of taking treatment, he died due to the injuries sustained. Therefore, he would support the award passed by the Tribunal.

5.Heard the parties and perused the records. As perusal of Ex.P.3 would show that the victim sustained the following injuries

"Linear Undisplaced fracture right roof of orbit; fracture right distal 1/3 ULNA; fracture bilateral 1st ribs and right IV rib; fracture right clavicle and Degloving injuries of right knee and right thigh and leg"

During the treatment period from 08.03.2007 to 17.03.2007, following surgeries were done on the deceased:

"Orif right ULNA and wound debridement right knee and thigh; wound debridement, fascial flap cover and SSG right knee; right thigh"

6. Even after treatment, the above injuries would not allow the victim to work normally as he was doing before sustaining injuries. As the injuries were serious in nature, the victim would have taken treatment and would have died on 01.03.2010. However, this Court cannot presume that he died due to the injuries in the absence of any medical records. At the same time, this Court has to believe the version of PW1, who categorically stated that the victim was taking treatment and he was not able to do any work at all. There is no contra evidence adduced on the side of the appellant and therefore, this Court finds that the victim continued to be under treatment till his death.

7. The Tribunal determined the monthly income of the victim at Rs.8,000/-. Even though there was a claim for Rs.15,000/- per month, in the absence of any proof, Rs.8,000/- determined by the Tribunal is very reasonable. The same is confirmed.

8. The victim sustained injuries on 08.03.2007 and he died on 01.03.2010. For a period of three years, there was loss of income and therefore, the loss of income is determined as follows:

$$\text{Rs.8,000/-} \times 12 \times 3 = \text{Rs.2,88,000/-}.$$
Therefore, the amount determined by the Tribunal for loss of income by applying multiplier method is set aside.

9. Similarly, the amount awarded towards loss of consortium, loss of love and affection, loss of estate, funeral expenses are set aside.

10. Medical expenses:

As per Ex.P.4, the Tribunal awarded a sum of Rs.1,38,937/- under this head. The same is confirmed.

11. Transportation:

The Tribunal awarded a sum of Rs.10,000/- under this head. The same is confirmed.

12. Nutritious charges:

No amount was awarded by the Tribunal under this head. Hence, this Court awards a sum of Rs.10,000/- under this head.

13. Damages to clothing and articles:

No amount was awarded by the Tribunal under this head. Hence, this Court awards a sum of Rs.5,000/- under this head.

14.Attendant charges:

No amount was awarded by the Tribunal under this head. Hence, this Court awards a sum of Rs.15,000/- under this head.

Head	Amount (Rs.)
Loss of income for three months	288000
Medical expenses	138937
Transportation	10000
Nutritious charges	10000
Damages to clothing and articles	5000
Attendant charges	15000
Total	466937

15.Hence, the total compensation payable in this case is Rs.4,66,937/- rounded off to Rs.4,70,000/-.

16.The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

17.It is submitted by the learned counsel appearing for the appellant/insurance company that the Insurance company is already said to have deposited the entire amount along with interest and costs before the Tribunal as per the award passed by the Tribunal. Therefore, the Tribunal is directed to transfer respective shares of the claimants as per the ratio fixed by the Tribunal, to their respective accounts through RTGS, (i.e.,) as per the modified award passed by this Court, within a period of one week from the date of receipt of a copy of this order. As this Court has reduced the compensation amount from Rs.15,39,000/- to Rs.4,70,000/-, the balance amount as per the modified award passed by this Court, shall be refunded to the Appellant/Insurance company within period of one week thereafter.

18.Accordingly, this appeal is partly allowed, reducing the award of the Tribunal from Rs.15,39,000/- to Rs.4,70,000/- with interest. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Special Sub Judge I to deal with MCOP cases,
(Motor Accident Claims Tribunal),
Court of Small Causes,
Chennai 104.

+lcc to Mr.R.Sivakumar, Advocate Sr.49839

C.M.A.No.1031 of 2018

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srg 19/09/2018



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