IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.269 of 2011
and
M.P.No.1 of 2011

New India Assurance Company Limited,
No.204, Kutchery Road,
Mylapore, Chennai - 600 004. ... Appellant/3rd respondent

..Vs..

J.Rengaswamy (Deceased)
1.M.Uma
2.R.Balaji
3.J.Devi
4.R.Saravanan ... Respondent 1 to 4/Claimants

5.M/s.Purita Mineral Water Private Limited,
No.26/7, M.K.Amman Koil Street,
Mylapore, Chennai - 600 004.
(R5 remained exparte before the Tribunal)

6.Tata AIG General Insurance Company Limited,
No.177, Anna Salai, Rajeja Towers,
Chennai - 600 002. ...Respondents 5 and 6 /
Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against Judgement and Decree dated 05.07.2010 passed in M.C.O.P.No.3638 of 2005 on the file of the Motor Accident Claims Tribunal, VI Judge, Court of Small Causes, Chennai.

For Appellant : Mr.R.Sivakumar
For Respondents : Mr.S.Natana Rajan for R1 to R4
R5 - Exparte
R6 - Given up.

JUDGMENT

This appeal is filed by the New India Assurance Company Limited, No.204, Kutchery road, Mylapore under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the VI Judge, Court of Small Causes, Chennai in M.C.O.P.No.3638 of 2005.

2.The brief case of the first respondent/claimant is as follows:

On 25.05.2005 at about 1.30 pm, the first petitioner (since deceased) was riding his TVS Champ Moped bearing Registration No. TN-10-C-6797 along Taramani road. When he was nearing Kamaraj Avenue road junction, a van bearing Registration No. TN-07-AY-9669 belonging to the first respondent came rashly and negligently and hit the first petitioner, as a result of which he sustained injuries. Immediately, he was rushed to the hospital where he took treatment for four days as an inpatient. Thereafter, the first respondent/claimant filed the claim petition in M.C.O.P. No.3638 of 2005 claiming a compensation of Rs.2,50,000/- from the following respondents:

(i) owner of the van bearing Registration No.TN-07-AY-9669
(ii) Tata AIG General Insurance Company Limited,
(iii) New India Assurance Company Limited.

3.During the pendency of the claim petition, the first petitioner died and therefore, his legal representatives were brought on record as petitioners 2 to 5. The third respondent in their counter had specifically averred that the injuries sustained by the first claimant were not fatal as he survived for six months. It is also contended by them that it was a natural death and therefore, the claim does not survive to the claimant as per the Section 306 of Indian Succession Act. The learned VI Judge, Court of Small Causes, Chennai, after analysing entire evidence on record more particularly, the evidence of Dr.N.Saichandran (P.W.3) had held that the death of the first claimant was proximate cause of the accident that took place on 25.05.2005 and then awarded a compensation of Rs.3,30,165/- together with interest at the rate of 7.5% per annum.

4.Mr.R.Sivakumar, learned counsel appearing for the appellant/third respondent would contend that in the case of an insurance claim, the cause of action would not survive to the legal representatives of the claimant. Reliance was placed on the decision in New India Assurance Company Limited represented by its Manager 161-A, Keezhaveli veethi, Madurai versus 1.S.Pooranam, W/o. Sithivinayagam 2.M.Raju, S/o. Manickam reported in 2011(1) TN MAC 826.

5.He also relied on the decision in the case of Branch Manager, Oriental Insurance Company Limited versus Manohar (deceased) through LRs. Reported in 2018 ACJ 1035 wherein in paragraph 23 and 24 it has been observed thus:

> "23.In Branch Manager, National Insurance Co. Ltd. v. Chennammal, 2014 (1) TN MAC 740, the accident occurred on 13.2.2004. Injured died on 15.10.2004. Going through evidence, while

considering the question, as to whether the finding of the Tribunal that the injuries sustained by Saroja in the accident that allegedly took place on 13.2.2004, about 1430 hours near Zuzuwadi Express petrol bunker led to her death on 15.10.2004 is erroneous and defective? A learned single Judge of this court held as follows:

> "(22) If all these aspects are taken into consideration, one has to come to a necessary conclusion that by hook or crook, the respondent No. 1 herein-claimant made an attempt to make a claim against the appellant herein-insurer in connivance with the respondent No. 2 herein-owner of the offending vehicle. The respondent No. 1 herein-claimant seems to have made an attempt to earn profit out of the unfortunate death of her daughter Saroja. The Tribunal (learned Principal District Judge), without properly appreciating the evidence, has arrived at an erroneous conclusion that respondent No. 1 herein-claimant was able to prove the petition averments regarding the accident, the identity of the vehicle and the cause of death and such erroneous finding led to the passing of the award directing respondent No. 2 herein and the appellant to pay a sum of Rs.5,59,000 as compensation together with interest at the rate of 7.5 per cent per annum from the date of filing of the MACP till realization. The said finding is defective and erroneous and the same is liable to be reversed. On re-appreciation of evidence, this court comes to the conclusion that the petition averments regarding accident, identify of the vehicle and the cause of death of Saroja have not been substantiated with sufficient and reliable evidence. Point No.1 framed by this court for decision in the appeal is bound to be answered in favour of the appellant herein and against respondent No. 1 herein-claimant.

(23) In view of the answer given to point No. 1, consideration of point Nos. 2 and 3 becomes unnecessary and it has to be held that respondent No. 1 herein-claimant is not entitled to recover any amount of compensation either from the respondent No. 2 or from the appellant herein."

24.In the light of the above discussion and decisions, this court is of the view that the Claims Tribunal erred in arriving at the conclusion that the death occurred due to the injuries. There is no causa causans, which as per Black's Law Dictionary is "the immediate cause, the last link in the chain of causation". Legal representatives can at best be awarded compensation for the expenses incurred and we quantify the same, as follows:

Fixing the monthly income of the injured as Rs.6,000 and taking note of the injury, elbow fracture, it could be deduced that the injured would have been immobilised, at least for some time, say, for instance, three months. Hence, a sum of Rs.18,000 (Rs.6,000*3) is awarded under the head 'loss of income'. There are no detailed medical records, except Exh. P2, wound certificate, Exh. P3, medical sheet and Exh. P4, graphic chart, indicating that Manohar would have sustained a fracture. Though no medical records have been filed to prove the medical expenditure incurred, considering the nature of injuries, a sum of Rs.5,000 under the head 'medical expenditure', would be just and reasonable. Rs. 5,000 is awarded for transportation. A sum of Rs.1,000 each is awarded under the heads 'nutrition' and 'damage to clothes'. In all, a sum of Rs.30,000 is awarded interest at the rate of 7.5 per cent per annum from the date of claim till deposit."

The learned counsel appearing for the appellant would therefore contend that since there is no evidence available on record to show that the death of the first claimant was due to the injuries sustained by him in the accident that took place six months prior to his death, the trial court has committed an error in fixing liability on the third respondent.

6.Per contra, Mr.S.Natana Rajan, learned counsel appearing for the respondent drew the attention of this Court to the discharge summary (Ex.P3) and the evidence of Dr.N.Saichandran (P.W.3). In the discharge summary (Ex.P3), it has been indicated that there was minimal hemothorax found on the chest. The evidence of P.W.3 is that since, there was a collection of blood in the lungs the first claimant died.

7.At the outset, it may be observed that P.W.3 is not the doctor who has given treatment to the first claimant. It is also seen from the discharge summary that the doctors have found Haemothorax on the chest and same was also treated immediately. On the date of discharge all the vitals were found to be stable and no collection of blood into lungs was noticed. The Trial Court has relied on the evidence of P.W.3 and has held that the death of the first claimant was due to the injuries sustained in the accident that took place six months prior to the date of the death of the first claimant. Without any evidence, the Trial Court has assumed that the death was due to the injuries sustained by the first claimant especially when the discharge summary shows that the first claimant had suffered a fracture on his left ribs alone. Except the evidence of P.W.3, absolutely there is no record to show that death was due to the injury sustained by the first claimant. It is also pertinent to point out that no post mortem has been done on the body of the deceased first claimant.

8.In the facts and circumstances, the award passed by the learned VI Judge, Court of Small Causes, Chennai, is liable to be set aside. As per the decision of a Division Bench of this Court in Branch Manager, Oriental Insurance Company Limited versus Manohar (deceased) through LRs. Reported in 2018 ACJ 1035, the claimants are entitled only for loss of income, medical expenses, transportation, nourishment and damage to clothes. Since, the first claimant had sustained fracture on his left ribs, he would have been bed ridden at least for three months . By applying the principles laid down by the Division Bench of this Court, the claimants are entitled to the following award amount:

S.No	Head	Amount granted
1.	Loss of income (for 3 months)	4,500*3= Rs.13,500/-
2.	Medical expenses	Rs.17,162/-
3.	Transportation	Rs.5,000/-
4.	Nourishment	Rs.5,000/-
5.	Damage to clothes	Rs.2,000/-
Total		Rs.42,662/-

The award amount shall carry interest at the rate of 7.5 per cent per annum from the date of petition till the date of deposit. The second claimant is entitled to a sum of Rs.12,662/- along with accrued interest and other claimants 3 to 5 shall be entitled to a sum of Rs.10,000/- each. The appellants are entitled to withdraw the amount from the credit of M.C.O.P.No.3638 of 2005 after furnishing necessary documents as per the circular issued by this High Court.

9.With the above observations, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mbi

To

1. The VI Judge,
   Motor Accidents Claims Tribunal,
   Court of Small Causes,
   Chennai.

2. The Section Officer,
   VR Section, High Court, Madras (2 copies)

+1 cc to Mr.R.Sivakumar, Advocate, S.R.No.76667
+1 cc to Mr.S.Natana Rajan, Advocate, S.R.No.76897

C.M.A.No.269 of 2011
M.P.No.1 of 2011

KJI(CO)
SSM(11/12/2018)