IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1543 of 2016
& CMP No.11722 of 2016

United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai 2.
... Appellant/2nd respondent

-vs-

(L.B.Kumaran (since deceased))

1. L.K.Anandhi

2. Minor L.K.Mithileswar

3. Minor L.K.Amirthashree

4. L.B.Neelavathi

(Minors are rep. by their mother and N.F. L.K.Anandhi)

(Petitioners 2 to 5 are brought on records
as Lrs of deceased 1st petitioner
as per order dated 19.1.2006 in M.P.2192/2005)

5.P.S.Narayanan Nair
... Respondents/Petitioner/2st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 30.11.2012 made in MCOP. No.2319 of 2002, on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents : Ms.Ramya V.Rao
for Mr.A.N.Viswanatha Rao

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The Insurance Company which suffered an award for payment of Rs.10,68,000/- for the death of one L.B.Kumaran, allegedly in a motor accident that occurred on 23.01.2001 has come forward with this Appeal contending that the accident was not the cause of the death and hence the Tribunal was in error in awarding compensation for the death of the said L.P.Kumaran.

2. The Original Petition was filed by the deceased himself seeking compensation for the injuries suffered by him in the motor accident that occurred on 23.01.2001. On the fate full day, the deceased 1st claimant was riding a motor cycle bearing Registration No.TN-20-B-0054 on Kundrathur Main Road, while so the 1st respondent Tipper Lorry owned by the 5th respondent, bearing Registration No.TN-37-S-8635, came in the opposite direction and dashed against the two wheeler, resulting in grievous injuries. It was also claimed that he died on 01.12.2005, nearly 5 years after the accident due to the injuries suffered in the accident.

3. The Claim Petition was resisted by the Insurance Company contending that the accident did not occur in the manner suggested by the claimant and the death was not because of the accident.

4. The Tribunal, which heard the Original Petition, concluded that the accident occurred due to a rash and negligent driving of the driver of the lorry. In coming to the said conclusion, the Tribunal relied upon the evidence of P.W.2, an eyewitness and the contents of the FIR, which was marked as Ex.P1. The Tribunal also pointed out that the Insurance Company had not chosen to examine the driver of the lorry to contradict the contents of the FIR.

5. On the quantum, the Tribunal concluded that the death was due to the injuries caused in the accident. The injuries that were caused in the accident as per Ex.P3, discharge summary are Grade III Compound Comminuted Intercondyle T fracture of the right fumer with stellate fracture patella with open knee joint injury. The treatment given as set out in Ex.P3 discharge summary is as follows:

ORIF Condylar Plate fixation right femur - 23.01.2001

Split thickness skin grafting right knee - 01.02.2001

6. A reading of the above discharge summary would disclose that the fractures were only on the femur bone and the knee joint. Ex.P5 issued by the PDR Orthopaedic Hospital would show that the deceased Kumaran had Chronic Obstructive Pulmonary Disease (Heart disease). It is also shown that the said deceased Kumaran was also on treatment for Asthma. The observations of the Orthopedician on discharge is stated as follows:

Patient comfortable, Sutures removed, wound is healed well, General condition good. He was also advised for non weight bear walking as practiced and mobilization exercises.

7. Ex.P6 series shows that the deceased Kumaran had undergone treatment with PDR Orthopaedic Hospital. On 24.08.2005, the deceased was certified to undergo surgery for removal of implants. It is at this juncture the said Kumaran, unfortunately died on 01.12.2005. The Tribunal after narrating the treatment taken had concluded that the deceased continued to be a under treatment till 24.08.2005. We find that the said conclusion of the Tribunal is against the evidence on record. Immediately after the accident in January 2001, there is evidence to show that the deceased had taken treatment till 15.03.2001 when bone grafting was done. Thereafter there is no documentary evidence to show that the deceased had been hospitalised for any other surgical procedure for the injuries suffered by him in the accident. Ex.P6, the letter issued by PDR Orthopeadic Hospital, would show that the deceased required a surgery for removal of implants. There is no other evidence to show continuous treatment as found by the Tribunal.

8. We are, therefore, unable to accept the finding of the Tribunal regarding continuous treatment till 24.08.2005. Even the letter shows that the treatment that was required during 2005 was only for removal of implants. A Hematology Report issued by V.B.V Diagnostic Centre, dated 14.12.2004 has been produced as Ex.P10, the said report does not relate to any of the injuries suffered in the accident. As already noted the hospitalization during August 2005, was only for the purpose of removal of plate. The Death Certificate shows that the deceased died in Chandrapur, Maharashtra on 01.12.2005. It is seen from the Medical Records, viz. Ex.P5, the deceased was having a Chronic Obstructive Pulmonary Disease, even when he was 32 years old. The Postmortem Certificate has not been produced to show the actual reason of the death. We are, therefore, of the considered opinion that the Tribunal was not right in concluding that the death happened due to the injuries caused in the accident. Therefore, the Tribunal was not right in granting compensation for the death.

9. Despite our above finding, the claimants who are the legal representatives of the deceased would be entitled to whatever compensation that he would have received for the injuries that were caused in the accident. We have adverted to the injuries caused as evidenced by the Discharge Summary which has been produced as Ex.P5 and Ex.P7 is the estimation of future medical expenses.

10. From the award of the Tribunal, we find that the Tribunal has awarded a sum of Rs.1,51,231/- for medical expenses, Rs.46,235/- for loss of income during treatment period. The other amounts, viz. pecuniary benefits, funeral expenses, loss of consortium and loss of love and affection cannot be awarded inasmuch as we have concluded that the death was not due to the injuries caused in the accident. However, the Tribunal has not awarded any amount towards pain and suffering and loss of future income. As a result of the injuries, the deceased the 1st claimant had undergone several surgeries with implants, we, therefore, find that an award of Rs.50,000/- towards pain and suffering would be just and proper. The Tribunal has fixed the monthly take home pay of the deceased at Rs.6,605/-.

11. Of course there is no evidence to show that the deceased had suffered any permanent disability due to the injuries caused by him in the accident. However, the T fracture in the right fumer bone that too at the age of 32 would definitely have a lasting impact on the activities of the injured. It is seen from the records that the deceased was working in Arul Jothi Woven Sack Industries, as a Manager. The Certificate issued by the said Company is produced as Ex.P14, though it does not bear any date it appears to have been issued some time in 2002. It does not reveal that the services of the deceased had been terminated. De hors the same, we are of the considered opinion that the injuries caused in the accident will definitely have an impact on the earning capacity of the deceased 1st claimant.

12. Considering the nature of injuries as well as the fact that the deceased has undergone an implant and removal of implant was also done, we fix the loss of earning capacity at 10%. The monthly income of the deceased was about Rs.6,605/-, and the multiplier applicable considering the age would be 16. Thus calculated the total loss of earning power would be Rs.12,68,160/- and 10% of it would be Rs.1,26,816/-. The Tribunal has not awarded any amount towards future medical expenses. Ex.P7 would show that the surgery for removal of plates would cost Rs.35,000/-, we are of the opinion that the claimant would have incurred at least a sum of Rs.25,000/- towards surgery for removal of plates.

13. We therefore modify the award of the Tribunal as

follows:

S.No.	Heads	Amount
1.	Loss of Income during the treatment period	Rs. 46,235/-
2.	Medical Expenses	Rs. 1,51,231/-
3.	Loss of Future earning capacity (6605/- X 12X 16 X 10%)	Rs. 1,26,816/-
4.	For pain and suffering	Rs. 50,000/-
5.	For future medical treatment	Rs. 25,000/-
	TOTAL	Rs. 3,99,282/-

Rounded off to Rs.4,00,000/- with 7.5% interest from the date of petition till date of deposit. It is stated that the Insurance Company has deposited the 50% of the entire compensation as awarded by the Tribunal. The claimants are entitled to interest on the sum of Rs.4,00,000/- awarded as compensation from the date of petition till date of deposit.

14. The learned counsel for the respondents 1 to 5 has filed a Memo stating that the 5th respondent Neelavathi, mother of the deceased Kumaran died on 24.02.3013. Since the compensation is for the injuries caused to the deceased Kumaran in the accident and his mother had died the memo is recorded, claimants 2 to 4/ respondents 1 to 3 are declared as the legal representatives of the deceased 4th respondent Neelavathi. The compensation is apportioned between the other claimants namely Claimants 2 to 4/respondents 1 to 3 as follows:

The wife namely the 1st respondent would be entitled to Rs.2,00,000/- with proportionate interest and entire costs, the respondents 2 & 3, the children would be entitled to Rs.1,00,000/- each with proportionate interest.

15.It is seen from the records that the 3rd claimant son/ 2nd respondent was aged about 7 years in 2006, therefore, he would have also attained majority by now. Hence the Tribunal is directed to pay out the shares of the major claimants, namely, the claimants 2 & 3/respondents 1 & 2, and the share of the minor claimant, namely the 3rd respondent, is directed to be kept in an interest earning fixed deposit in any one of the Nationalised Banks till she attains majority. We are not permitting the mother to withdraw quarterly interest as the amount deposited itself is very meager.

16. In fine, the appeal is partly allowed, the compensation awarded by the Tribunal is reduced to Rs.4,00,000/- with interest at 7.5% from the date of petition till date of deposit. The remaining amount if any is directed to be paid over to the Insurance Company. There shall be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

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

Copy to:
The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.67572

+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.67613

CMA.No.1543 of 2016
& CMP No.11722 of 2016

PA(CO)
GSP(13/11/2018)