

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.181 of 2018
and

CMP.Nos.11084 & 2187 of 2018

M/s.United India Insurance Co. Ltd.,
Motor Third Party Claims Hub,
'Sillingi Buildings', IV Floor,
No.132, Greams Road,
Chennai - 600 006. ... Appellant/IIIrd Respondent

...vs...

N.Kamalammal(died)

1.N.Kanniyappan

2.N.Purushothaman

3.N.Parasuraman

4.N.Ezhumalai

... Respondents 1 to 4/2 to 5 Petitioners

5.Rahman Sharif

... 5th respondent/1st respondent

A.Rajaraman

... 6th respondent/2nd respondent.

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act,1988, against the Order and Decreetal Order dated 09.10.2017 made in MCOP.No.3525 of 2011 on the file of the Motor Accident Claims Tribunal/(Special Sub Judge-I for MCOP Cases)Small Causes Court, Chennai.

For Appellant : M/s.S.J.Michael Visuvasam

For Respondents : M/s.Amar D. Pandiya R1 to R4
R5 & 6 : No Appearance

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 09.10.2017 made in MCOP.No.3525 of 2011 on the file of the Motor Accident Claims Tribunal/(Special Sub Judge-I for MCOP Cases) Small Causes Court, Chennai, the present appeal has been filed by the IIIrd respondent Insurance Company to set aside the award passed by the Tribunal.

2.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3.The case of the petitioners is that on 13.08.2011 at about 11.00 hours, while the petitioner was standing near Potheri Bus

stop, in GST Road, on the Chengalpet to Tambaram side, a van bearing Registration No.TN-30-X-3621, came at high speed, driven in a rash and negligent manner, dashed against the petitioner, causing her multiple grievous injuries. The accident occurred only due to the negligence of the said van driver only. The petitioner who was aged 60 years was earning a sum of Rs.6,000/- per month by working as agriculture coolie. Due to the injuries suffered, she is unable to attend to her normal avocation. Hence, she seeks a sum of Rs.6,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4.On the other hand, opposing the claim petition, the 3rd respondent/Insurance Company by filing counter contends that the age, occupation and income of the petitioner as stated in the claim petition is not admitted. The petitioner has to prove the first respondent van driver possessed valid driving licence. The accident does not occur due to the negligence of the first respondent van driver. The injured victim did not die due to the injuries suffered in the accident. The claim of the petitioner is exorbitant. Thus, the 3rd respondent-Insurance Company sought for dismissal of the claim petition.

5.Before the Tribunal, the petitioners examined P.W.1, produced documents Ex.P1 to Ex.P16 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6.The Tribunal, on the basis of materials available on record, found the negligence of the driver of the first respondent van driver alone caused the accident passed an award for a sum of Rs.2,30,000/- as compensation payable by the respondents to the petitioner. Aggrieved over the said findings of the Tribunal, the 3rd respondent/Insurance Company has come forward with this present appeal to set aside the award passed by the Tribunal.

7.Heard the learned counsel appearing for the appellant/3rd respondent Insurance Company and the learned counsel appearing for respondents 1 to 4/claimants and perused the materials available on record.

8.The learned counsel appearing for the appellant/3rd respondent Insurance Company contends that the Tribunal wrongly held that the accident occurred only due to the negligence of the driver of the van bearing Registration No.TN-30-X-3621. The Tribunal solely on the basis of Ex.P1 First Information Report found the first respondent vehicle driver negligence as the cause for the accident. The admission of P.W.1 that he had not seen the accident was over looked by the Tribunal. The Tribunal also failed to note the contents of Ex.P3 Discharge Summary

wherein it is stated that the deceased met with an accident while crossing the road. The accident occurred only because the deceased suddenly crossed the GST Road without noticing the on coming traffic. The amount awarded by the Tribunal under different heads is highly excessive. Thus, the 3rd respondent Insurance Company seeks to set aside the award passed by the Tribunal by entertaining the appeal.

9.Per contra, the learned counsel appearing for the respondents 1 to 4/claimants contends that it is clearly established by the oral and documentary evidence that the negligence of the first respondent van driver alone caused the accident and the Tribunal on the basis of available evidence correctly fixed the negligence of first respondent van driver and passed an award providing a just and reasonable compensation. Thus, the respondents 1 to 4/claimants contends that there is no need to interfere with the same. Thus, the respondents 1 to 4/petitioners sought for dismissal of the appeal.

10.The injured petitioner Kamalammal died pending proceedings of the claim petition, her L.Rs are added as parties to the proceedings. According to the respondents/claimants, it is only due to the rash and negligent driving by the driver of the van bearing Registration No.TN-30-X-3021, the accident occurred. The police have registered Ex.P1 First Information Report against the first respondent vehicle driver only. The contents of Ex.P1 First Information Report corroborates the evidence of P.W.1. On the other hand, the respondents have not let in any oral or documentary evidence to contradict the claim of the claimants. As such, the Tribunal on the basis of P.W.1 oral evidence and contents of Ex.P1 First Information Report correctly concluded that negligence of the first respondent vehicle driver alone caused the accident.

11.Admittedly, the injured petitioner Kamalammal died pending disposal of the Motor Accident Claim Petition, as such it is to be seen whether the death was caused due to the injuries suffered in the accident. The petitioner has produced the discharge summary as Ex.P2 and Ex.P3, the scan report Ex.P4 and the O.P. chit as Ex.P6. The petitioners also filed death certificate of Kamalammal as Ex.P7. It is evident from the documents produced by the petitioners that the injured petitioner Kamalammal took treatment as inpatient from 13.08.2011 to 16.08.2011 in SRM Medical College Hospital. There is nothing on record to show that the injured petitioner underwent any surgical treatment. It is clear from the documents available on record that the injured Kamalammal sustained fracture of left occipital bone and the same was grievous injury. However, there is no evidence to show that the death occurred due to the injuries suffered in the accident.

12.As stated earlier, the deceased Kamalammal under went treatment for three days up to 16.08.2011 as inpatient in SRM Medical College Hospital and after discharge she died nearly after 17 months on 03.02.2013 only. There is no evidence to link her death with the injuries suffered in the accident. Further, no postmortem certificate was produced. Therefore, it is clear that the claimants are not entitled to seek compensation for the death of deceased Kamalammal, but only for the injuries suffered by her in the accident. The claimants stated that the injured Kamalammal suffered frontal bone fracture, severe head injury, orbit fractured, scalp injury and multiple grievous injuries all over her body. It is evident from Ex.P2 and P3 discharge summary that the deceased Kamalammal suffered grievous injuries. Even though, no Doctor was examined to prove the disability suffered by the petitioner, the Tribunal fixed the disability at 30% and provided for a sum of Rs.3,000/- per percentage. Thus, Rs.90,000/- (Rs.3,000/- x 30%) was awarded as disability compensation. In the absence of any medical evidence to show that the petitioner suffered permanent disability, it will not be appropriate to provide compensation at Rs.3,000/- per percentage. Similarly, in the absence of any medical evidence to prove that the injuries suffered by the petitioner caused functional disability, it will not be appropriate to provide him disability compensation as done by the Tribunal. Taking into account the documents produced by the petitioner, it is clear that the petitioner suffered bone fracture and grievous injuries. As such, it will be appropriate to provide Rs.30,000/- as compensation to the petitioner for grievous injuries suffered by her.

13.The petitioner having suffered fracture and took treatment as inpatient in SRM Medical College Hospital, it will be appropriate to provide Rs.25,000/- towards pain and sufferings under gone by him instead of Rs.50,000/- provided by the Tribunal. As the petitioner suffered severe fracture, she would have needed assistance of another person atleast for a period of one month. Thus, a sum of Rs.2,000/- provided by the Tribunal under the head attender charges is enhanced to Rs.4,000/-. Considering the nature of injuries suffered by the deceased, it will be appropriate to provide Rs.10,000/- for Transportation instead of Rs.5,000/- provided by the Tribunal. The deceased having suffered multiple fracture, he would not have attend to her agriculture cooli work at least for three months. Hence at the rate of Rs.5,000/- per month, a total sum of Rs.15,000/- provided as loss of income during treatment period instead of Rs.48,000/- provided by the Tribunal. Further, a sum of Rs.3,750/- provided for medical expenses as per Ex.P15 medical bill is confirmed. Considering the nature of injuries suffered by the petitioner and the period treatment undergone by her, a sum of Rs.30,000/- provided by the Tribunal

for extra-nourishment is on the higher side and the same is to be reduced. Hence the same is reduced to Rs.10,000/-. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent disability	90,000.00	-
2.	Grievous injury disability	-	30,000.00
3.	Pain and suffering	50,000.00	25,000.00
4.	Attender Charges	2,000.00	4,000.00
5.	Transport Charges	5,000.00	10,000.00
6.	Loss of income during treatment period	48,000.00	15,000.00
7.	Medical Bills	3,750.00	3,750.00
8.	Damage to cloths	-	2,250.00
9.	Extra-nourishment	30,000.00	10,000.00
	Total	2,28,750.00	1,00,000.00

Accordingly, the amount of Rs.2,28,750/- awarded by the Tribunal is modified and the same is reduced to Rs.1,00,000/-.

14. In the result, the Civil Miscellaneous Appeal is allowed. No costs. The amount of Rs.2,28,750/- awarded by the Tribunal dated 09.10.2017 made in MCOP.No.3525 of 2011 on the file of the Motor Accident Claims Tribunal/(Special Sub Judge-I for MCOP Cases) Small Causes Court, Chennai is reduced to Rs.1,00,000/-. The appellant/3rd respondent Insurance Company is directed to deposit the entire award amount of Rs.1,00,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. The Appellant/3rd respondent Insurance company is entitled to withdraw the excess amount, if any paid. On such deposit, the respondents 1 to 4/claimants are entitled to get equal share. The respondents 1 to 4/claimants are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. Consequently, connected C.M.Ps. are closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

1.The Special Sub Judge I,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

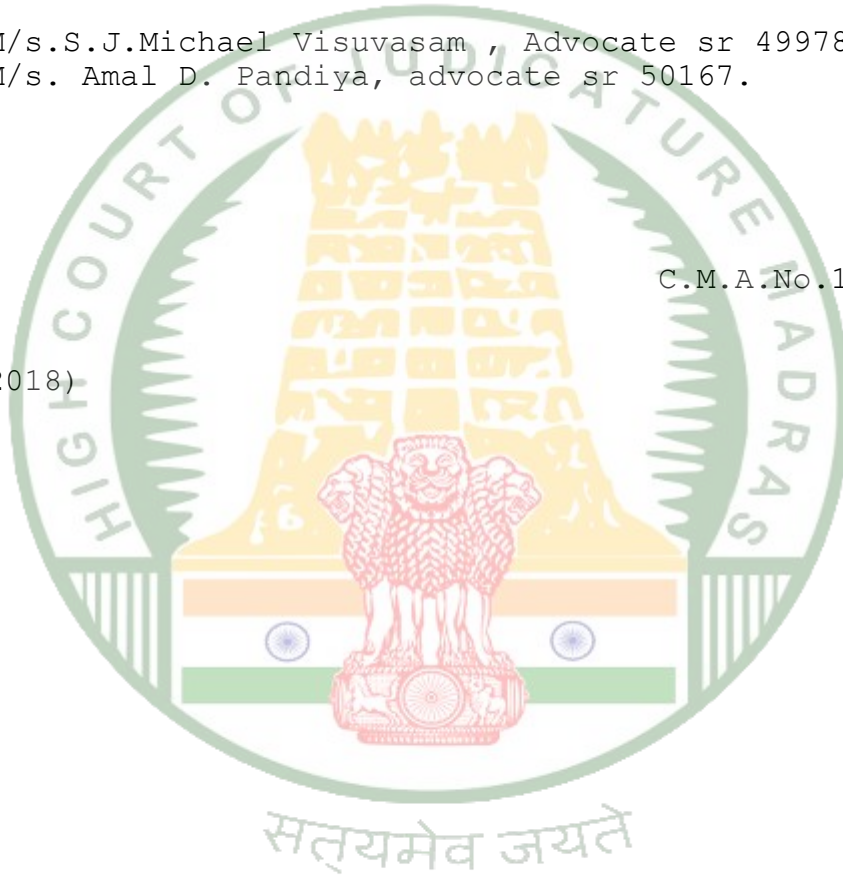
2.The Section Officer,
V.R. Section,
High Court, Madras 104.

+1 CC to M/s.S.J.Michael Visuvasam , Advocate sr 49978

+1 CC to M/s. Amal D. Pandiya, advocate sr 50167.

C.M.A.No.181 of 2018

SVN(CO)
SP(10/09/2018)



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