

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No. 1515 of 2017

Kolanji (Deceased)

1. Thamilarasi
2. Shanmugham
3. Sumathi
4. Sellapangi

..Appellants/Claimants

vs.

1.V.Baskar

2. United India Insurance Company Limited,
Sri Varasakthi Vinayagar Koil Street,
Periyar Nagar (South), Virudhachalam - 606 001.
Presently at
No.134, Silingi Building, Ivth Floor,
Greems Road, Anna Salai,
Chennai - 600 006.

..Respondents/Respondents

Civil Miscellaneous Appeal has been filed against the judgment and decree dated 24.06.2013 made in MCOP No.5/2011 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Ariyalur.

For appellant : Mr.A.A.Venkatesan

For Respondents : M/s.M.J.Vijayaraghavan for R2

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the petitioner/claimant, against the judgment and decree dated 24.06.2013 made in MCOP No.5/2011, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Ariyalur.

2 For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the petitioners/claimants before the Tribunal as per their claim petition is that on 29.05.2009 at

8.30 p.m., when the injured Kolanji was attending the work of loading sugarcane in the Tractor in Jeyamkondam to Virudhachalam road. At that time, Maruti Omni Van bearing Reg.No.TN 20 U 3022 came at high speed and dashed against the said Kolanji and another person. Due to the accident, Kolanji suffered injuries and he was admitted in General Hospital at Jeyamkondam. Subsequently, he died, during the pendency of the claim petition filed by him. Legal heirs of the said Kolanji are continuing the proceedings.

2.1 The Kolanji was aged about 46 years at the time of accident and was earning Rs.7,500/- per month by doing cooli work. The said Kolanji died due to the grievous injuries and permanent disability suffered by him. Hence the petitioners/claimants seek a sum of Rs.6,00,000/- as compensation for the same.

3 On the other hand, opposing the claim of the petitioner, by filing counter, the second respondent/Insurance Company, contended that the owner of the vehicle has not informed any details with regard to the accident and also the details pertaining to insurance coverage of his vehicle. Further the driver of the vehicle had no valid driving license. The driver cum owner of the vehicle involved in the accident drove his vehicle under the influence of alcohol and the same amounts to violation of policy condition. Therefore the second respondent/Insurance Company is not liable to pay any compensation.

4 Before the tribunal, the petitioners have examined P.W.1 and P.W.2 and produced documents Ex.A1 to Ex.A12, to prove their claim. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex.B.1 and Ex.B2 were marked. The Tribunal on the basis of the material available before it, found that the first respondent vehicle driver alone was responsible for the accident and awarded a sum of Rs.80,000/- as compensation to the petitioners. Being not satisfied with the conclusion of the Tribunal and quantum awarded, the petitioners have come forward with the present appeal.

5 The learned counsel for the petitioners/claimants, contents that the Tribunal failed to consider both oral and documentary evidence properly and awarded a very meagre compensation. The Tribunal failed to consider the claim of the petitioners/claimants that the deceased was earning Rs.7,500/- per month. The Tribunal also failed to add any amount under the head of future prospectus. It failed to appreciate the fact that the deceased Kolanji died due to the injuries suffered by him in the accident. The amount awarded by the Tribunal under various heads was very nominal. Hence, the learned counsel for the

petitioners/claimants seeks to grant an additional compensation of Rs.5,00,000/-, by allowing the appeal.

6 Per contra, the learned counsel for the second respondent/Insurance Company states that there is no nexus between the accident and the death of the said Kolanji and the claim of the petitioners on that ground is to be negatived. He further contended that it is not only the negligence of the driver of the offending vehicle that caused accident, but also, the injured Kolanji was also responsible for the same. The manner in which the accident occurred as alleged by the petitioners/claimants is not correct. The accident occurred only due to composite negligence on the part of the said Kolanji also. The learned Tribunal has properly appreciated the available material on record and awarded compensation in fair and just manner. As the Tribunal has rightly awarded compensation for the injuries suffered by the said Kolanji, the same need not be intervened. Hence the learned counsel seeks to dismiss the petition.

7 Heard the learned counsel appearing for both sides and also perused the materials available on record.

8 The wife of the deceased Kolanji, who deposed as P.W.1 stated that on 29.05.2009, at about 8.30 p.m. when her husband Kolanji and another person Ramar were loading sugarcane in a tractor near Jeyamkondam to Vridhachalam road, Maruti Omni Van belonging to the first respondent came at high speed and dashed against the said two persons resulting in grievous injuries to them. The petitioner also produced copy of the FIR as Ex.P.1 registered against the driver of the offending vehicle bearing Reg.No.TN 20 U 3022.

9 Even though, the second respondent /Insurance Company contended that the accident occurred due to negligence of the injured person only, there is no evidence to substantiate the said claim of the second respondent/Insurance Company. In such circumstances, on the basis of P.W.1 evidence and the fact that the Ex.P1 FIR was registered against the first respondent driver, it is clear that the negligence on the part of the first respondent driver alone was the cause for the accident.

10 It was stated by P.W.1 in her deposition, that her husband Kolanji suffered grievous injuries and was admitted in General Hospital at Jeyamkondam. The said Kolanji was discharged on 19.08.2009 and thereafter he was admitted in Thanjavur Medical College Hospital on 09.09.2009 and discharged on that day. Subsequently he was treated in the same Hospital for one day on 02.10.2009 and again on 08.01.2010 and thereafter he was admitted in General Hospital at Jeyamkondam on 16.04.2010 and

referred to the Tanjavur Medical College Hospital, where he died on 22.01.2010. The petitioners claim that the said Kolanji died only due to the after effects of the injuries suffered by him in the accident. However, no post-mortem was done on him. The petitioners produced medical records of the deceased Kolanji as Ex.A2 to Ex.A4, wherein the injuries suffered by the Kolanji were shown as grievous injuries. It is evident from the same that the said Kolanji suffered fracture in his right femur. The discharge summary issued by Thanjavur Medical College Hospital is produced as Ex.A12.

11 Even though the petitioners/claimants claimed that the deceased Kolanji died only due to the injuries suffered by him in the accident, this Court is of the view that in the absence of post-mortem report or any other document to prove the contention, the claim of the petitioners/claimants for compensation on the ground that the death occurred only due to the accident, cannot be accepted. In such circumstances, the compensation is to be awarded only for the injuries suffered by the said Kolanji. As the Kolanji suffered fracture of Pelvic Bone and he has taken medical treatment over a period of time, he could not have attended any work and could not earned any income for his family. As he was stated to be earning Rs.7,500/- p.m., it would be appropriate to award a sum of Rs.50,000/- towards loss of income. The said Kolanji has taken intermittent treatment for about ten months and that for transportation and other expenses a sum of Rs.20,000/- is awarded. Kolanji would have needed the assistance of another person to go to Hospital and come back. Hence for attender charges and medical expenses a sum of Rs.40,000/- is awarded and for pain and suffering a sum of Rs.40,000/- is provided for.

12 Accordingly, the compensation of Rs.80000/- for the injuries suffered and for the medical treatment & Transportation charges, granted by the Tribunal is modified as follows:-

Sl No	Heads	Awarded by this Court
1.	Loss of income during the period of treatment	50,000.00
2.	Transportation and other expenses	20,000.00
3.	Attending charges and medical expenses	40,000.00
4.	Pain and Suffering	40,000.00
	Total	1,50,000.00

13 In view of the above modification, the civil

miscellaneous appeal is partly allowed. No costs. The second respondent/Insurance Company is directed to deposit the entire modified award of Rs.1,50,000/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of copy of this order. The first and fourth petitioner are entitled for 50% each of the award amount. On such deposit, the first and fourth petitioners/claimants namely the wife and Mother of said Kolanji are permitted to withdraw their respective share amount with proportionate interest and costs, deposited by the second respondent/Insurance Company, by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Principal District Judge, Ariyalur.
2. The Section Officer,
V.R.Section, High Court, Madras.

C.M.A.No.1515 of 2017

GP (CO)
GN (27/04/2018)

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