



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2018
(Reserved on 16.04.2018)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.1461 of 2013

The Manager,
The New India Assurance Company Limited,
Nagercoil,
Kanyakumari District.

... Appellant/3rd Respondent

vs.

1) Bagavathi Amma
2) N.Thankam
3) N.Murugadhas
4) R.Manikandan
5) Saravanapriya
(RR 4 & 5 already been dispensed with)

... Respondents 1 to 3/Petitioners

... Respondents 4&5/Respondents 1&2

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.116/2010 dated 22.02.2013 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Padmanabhapuram.

For Appellant : Mr.J.S.Murali

For R1 to R3 : Mr.C.Godwin

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 22.02.2013 made in MCOP.No.116/2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Padmanabhapuram.

2.The case of the respondents 1 to 3/claimants is that on 06.08.2008, about 09.30 a.m., when the deceased Natarajan was riding his motorcycle bearing registration No.TN-74-V-8287 on the left side of Thiruvananthapuram Road in front of the Taluk Office at Thuckalay, a Lorry bearing registration No.TN-74-U-2647 driven by its driver/4th respondent herein insured with the appellant, came in a rash and negligent manner and dashed against the deceased, in which, the deceased sustained injuries and he was taken to Vijaya Hospital, Paraiicode, where first aid was given by Dr.Kannan. Thereafter, as per the advice of the doctor, the



deceased was admitted in Kanyakumari Medical College Hospital, Asaripallam, on 07.08.2008, where, a surgery was performed in the right leg of the deceased and steel screws were inserted to set right the damaged ankle. He was discharged on 08.09.2008.

3. It is the further case of the claimants that due to the injuries, the right leg of the deceased got severely affected and he became permanently disabled person and he was not able to move without anybody's help to his privacy. The National Identity Card for disabled person was also issued to the deceased on 29.04.2009. Thereafter, as per the advice of the doctors, he was re-admitted in Kanyakumari Medical College Hospital, Asaripallam, on 18.08.2009, for conducting surgery to remove the steel screws and to remove a small piece of broken bone on the foot of right leg. One Dr. Valluvan made surgery on the foot of the right leg on 19.08.2009 and due to cardiac problem, he left the surgery incomplete and the deceased was continuously getting treatment as inpatient in the hospital. After giving required treatment and medicines, on 09.09.2009, while a surgery was being performed to remove the steel screws, the deceased Natarajan expired in the operation theatre.

4. Narrating the above averments, wife, daughter and son of the deceased filed MCOP.No.116/2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Padmanabhapuram, claiming compensation of Rs.6,00,000/-. The appellant insurance company filed counter affidavit, contending that accident had occurred due to the negligence of the deceased and the injuries sustained by the deceased were fully cured and thereafter, he was discharged from the hospital in good condition. The death occurred only due to the cardiac problem of the deceased and not due to the injuries sustained in the accident.

5. After considering the oral and documentary evidence adduced on either side, the Tribunal held that the death of the deceased occurred only due to the injuries sustained by him in the accident and therefore, directed the appellant to pay compensation of Rs.3,99,430/- with interest at 7.5% per annum to the respondents 1 to 3/claimants. Aggrieved by the said award, the appellant has filed this appeal questioning the liability and quantum.

6. Learned counsel for the appellant would contend that the Tribunal failed to consider that there was no nexus between the injuries sustained by the deceased and the cause of death which was only due to the cardiac problem of the deceased. It is further contended that no postmortem certificate was produced by the claimants to prove the cause of death. Further, the accident had occurred on 06.08.2008 and injured died after one year on 09.09.2009 and no oral or documentary evidence was produced to prove that the injured was under continuous medical treatment from the date of accident till the date of his death. Therefore, the



learned counsel submitted that the Tribunal has erred in fastening liability on the appellant.

7. Perusal of the impugned judgment shows that wife of the deceased examined herself as PW1 and Exs.P1 to P15 were marked on the side of the claimants. On behalf of the appellant, one Kolappan was examined as RW1, investigating officer of the appellant company was examined as RW2 and copy of insurance policy of the offending vehicle and investigation report were marked as Exs.R1 and R2 respectively.

8. Perusal of the evidence of RW1 clearly reveals that the deceased Natarajan was re-admitted in the Hospital on 18.08.2009 for removing the screw in the right leg which fact was not denied by the appellant. The evidence of RW2 also shows that he did not get any statement from the doctor who treated the deceased in Government Hospital for the second time. Further, the appellant also failed to examine Dr.Valluvan to prove that the deceased died only due to cardiac problem.

9. Perusal of the impugned judgment discloses that though an attempt had been made by the appellant to contend that no postmortem was conducted and it is fatal to the case, the Tribunal relying upon the decision reported in 2012 (7) MLJ 357 *New India Assurance Co.Ltd., Chennai vs. R.Santhi and others*, held that merely because postmortem not conducted, it cannot be said that the death was not due to the injuries sustained in the road accident. The Tribunal also held that there is no contra evidence to show that the deceased not died due to the injuries sustained in the accident happened on 06.08.2008 and there is no evidence to show that the deceased died due to cardiac problem. Since there is a specific admission by RW1 that the deceased was admitted second time in the hospital for removing the screws, the Tribunal held that the deceased died due to the injuries sustained in the accident on 06.08.2008. In my considered opinion, there is no infirmity in the finding of the Tribunal regarding liability of the appellant and therefore, the said finding is confirmed.

10. As regards the quantum of compensation, upon perusal of the impugned judgment, this Court is of the opinion that the quantum is very very reasonable and it is not on the higher side warranting interference by this Court. Accordingly, the quantum of compensation is also confirmed.

11. The appellant is directed to deposit the entire award amount with interest and costs, less the amount already deposited, if any, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3/claimants are permitted to withdraw their respective shares with interest without filing any formal petition before the Tribunal.



In the result, this Civil Miscellaneous Appeal is dismissed.
No costs.

Sd/-
Assistant Registrar(T&P)

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/True Copy/

Sub Assistant Registrar

To

- 1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Padmanabhapuram.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.J.S.Murali , Advocate in SR No. 68809
+ 1 cc TO Mr.C.Godwin , Advocate in SR No. 68796

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AE/RSK/SAR2/10.07.2018/4P/6C

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