



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD) .No.1610 of 2013

1.Alagu

2.Nallammal

3.C.Raman

4.Lakshmi

5.C.Kumar

... Appellants/Petitioners

Vs.

1.M/s.Dindigul City Travels,
through its Managing Partner,
Dindigul.

2.The New India Assurance Company
Limited, through its Divisional Manager,
Dindigul.

... Respondents/Respondents

(1st respondent remained ex parte in the lower Court)

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, against the award passed in M.C.O.P.No.328 of 2005, dated 16.11.2011, on the file of Motor Accident Claims Tribunal / Additional District and Sessions cum Fast Track Court No.III, Madurai.

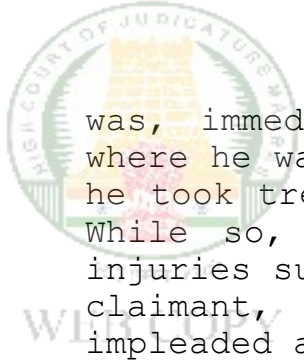
For appellant : Mr.V.Jeyapragash

For 2nd respondent : Mr.J.S.Murali

JUDGMENT

The appellants / claimants have filed this appeal seeking to enhance the compensation.

2. According to appellants, due to the rash and negligent driving of the driver of the bus owned by the first respondent and insured with the second respondent, on 01.09.2004 the original claimant viz., Chinnu, who was walking on the side of the road, sustained fractures and multiple injuries. The original claimant



was, immediately, taken to the Government Hospital, Natham, from where he was referred to the Government Rajaji Hospital, Madurai and he took treatment there as inpatient from 01.09.2004 to 18.09.2004. While so, on 07.02.2010, the original claimant died due to the injuries sustained in the accident. After the death of the original claimant, his legal heirs viz., the present appellants were impleaded as claimants.

3. According to the 2nd respondent, the cause of the death was not due to the injuries sustained in the accident and that there is no nexus between the injuries and the cause of death of the original claimant. The Tribunal has rejected the claim of Rs.3 lakhs sought for by the appellants / respondents as there is no sufficient oral and documentary evidence produced, however, awarded a compensation of Rs.25,000/- with 7.5% interest to the claimants towards the pecuniary loss to the estate of the injured.

4. The learned counsel appearing for the appellants / claimants contended that after the accident on 01.09.2004, the original claimant had been continuously taking treatment till his death ie. on 07.02.2010 and therefore, the second respondent / Insurance Company is liable to pay the just compensation as claimed by the claimants. Thus, he prayed to enhance the compensation.

5. The learned counsel appearing for the second respondent / Insurance Company would submit that an unknown vehicle was involved in the accident and that the claimants and the 1st respondent colluding with the Police filed a false case against the driver of the first respondent and therefore, the 2nd respondent is not liable to pay any compensation to the claimants. He would further submit that the original claimant died after about six years of the accident and therefore, the cause of the death was not due to the injuries sustained in the motor accident. Thus, he prayed to dismiss the appeal.

6. Heard the learned counsel appearing for both sides and perused the records carefully.

7. It is seen from the record that the motor accident was occurred on 01.09.2004. The death of the original claimant was on 07.02.2010. As stated by the learned counsel for the second respondent / Insurance Company, after nearly about six years of the accident, the original claimant died. It is seen from the record that after the accident, the original claimant took treatment as inpatient in the Government Rajaji Hospital from 01.09.2004 to 18.09.2004. The claimants have not produced any oral and documentary evidence to substantiate their contention that the original claimant had been in continuous treatment for six long years due to the injuries sustained in the accident. The claimants have also not produced any document to substantiate their contention that the injuries sustained in the accident had alone caused the death of the original claimant. Further, PW4 - Dr.P.S.Shanmugam has also



admitted in his cross examination that it cannot be categorically stated that the death of the original claimant was due to the injuries sustained in the accident.

8. As rightly held by the Court below, the claim for the personal injury filed under Section 166 of the Motor Vehicles Act would abate on the death of the original claimant and the same would not survive to his legal heirs, except as regards the claim for pecuniary loss to the estate of the injured. Considering the facts and circumstances of the case, the Tribunal has awarded a sum of Rs.25,000/- towards the pecuniary loss to the estate of the injured. This Court does not find any reason to interfere with the award passed by the Tribunal.

9. In view of the above, this Civil Miscellaneous Appeal is dismissed. The award passed by the Tribunal is confirmed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. Additional District and Sessions cum
Fast Track Court No.III,
The Motor Accident Claims Tribunal,
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1cc to M/s.C.Godwin, Advocate, SR.No.68385.

+1cc to Mr.J.S.Murali, Advocate, SR.No.68363.

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14.06.2018

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RAM/KKR/SAR 3/09.07.2018/3P/6C