

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA.No.109 of 2015

and

M.P.No.1 of 2015

The Branch Manager,
National Insurance Co.Ltd.,
Branch Office, No.266-N,
Junction Main Road, five Roads,
Salem-636 004. ... Appellant/2nd Respondent

Vs

1.Perumali ...Petitioner/1st respondent
2.M.Palaniammal ...2nd Respondent/1st respondent
(R2 set exparte before the Tribunal)

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 11.07.2014 made in M.C.O.P.No.43 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellant : S.Arunkumar
For RR1 : No Appearance
For R2 : -

JUDGMENT

This Civil Miscellaneous has been preferred against the judgment and decree dated 11.07.2014 made in M.C.O.P.No.43 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

2. Brief facts leading to the claim application are as follows;

On 13.03.2001 at 12.15 P.M., when the deceased Palaniammal was walking on the left side of the road from pennagaram to Mangari through Bye pass Road. A auto bearing registration No. TN-29/E.1017 belonging to the first respondent herein and insured with the second respondent herein, drove the same in a rash, reckless and negligent manner, at an uncontrolled speed, without any sound or caution and dashed against the deceased and caused the accident. As a result of which, she sustained injuries and immediately admitted in Government hospital , Dharmapuri and taking treatment till 14.03.2001, and under went further treatment to Medical college, Salem, from 14.03.2001 to 27.03.2001. Hence, the legal heirs of the deceased filed a claim petition before the Tribunal claiming a compensation of Rs.5,00,000/- whereas the Tribunal awards Rs. 3,69,000/- towards the same.

3. The Insurance Company in the counter statement has denied the mode of accident as stated by the claimant in the claim petition. Further stated that the death of the deceased Palaniammal is a natural death who died after four and half years of the alleged accident. It is not correct to say that the death of the said Palaniammal is due to the injuries in the alleged accident. Further denied the statement of claimant that the deceased was under continuous medical treatment, as the claimants have not filed the Postmortem Report and medical records to show that the deceased has taken continuous treatment till her death. It is further denied the negligence on the part of the driver of the alleged vehicle (Auto) and the compensation awarded under heads also denied as excessive.

4. The tribunal on considering the evidence and documents, has given finding that the accident occurred due to rash and negligent on the part of the driver of the auto and directed the owner and insurer of the vehicle to pay compensation jointly and severally. The compensation awarded by the tribunal under various heads is as follows;

Head	Amount awarded by the tribunal (Rs.)
Future loss of income	3,24,000
Loss of Love and affection for the petitioner	25,000
Transport to hospital	10,000
Funeral expenses	10,000
Total	3,69,000

Aggrieved against the said award and liability, the Insurance Company has preferred this appeal.

5. In the grounds of appeal, the Appellant / Insurance Company contended that the tribunal failed to take note of the fact that the accident took place on 13.03.2001 and the claimant has filed the claim application very belatedly i.e., in the year 2008 for the death occurred in the year 2005. The tribunal miserably failed to note that EX. P5 is the discharge summary, there is also no relevant documents that the injured had taken continuous treatment for the head injury and the death occurred only due to the injuries sustained in the accident. Hence the appellant/Insurance company is very much aggrieved against the findings of the tribunal that the death resulted only due to the injuries sustained at the time of accident and the compensation awarded by the tribunal.

6. Heard both sides and perused the documents available on record.

7..On perusal of records it is observed that the accident occurred on 13.03.2001, and immediately the injured person was admitted in hospital, Dharmapuri and took treatment till 14.03.2001 again to the treatment in Medical college, Salem, from 14.03.2001 to 27.03.2001. The contention raised by the claimant is that the injured was in a critical stage from the date of accident and inspite of better treatment given to her, she died on 28.09.2005.

8.It is argued by the appellant/Insurance company vehemently contended that the facts alleged by the claimant, that the deceased died due to the injury sustained in the accident is not true and there is no sufficient proof, to substantiate the fact that she was under continuous treatment till her death. There is no postmortem certificate for the deceased and Ex.P.7 discharge sheet issued from the Department of Neuro Surgery, Government Bohan Kumaramangalama Medical College, Hospital, Salem, reveals the fact that the death had not occur due to the accident, which aspect was not properly appreciated by the Tribunal, but it shows that the deceased underwent treatment from 14.03.2001 to 27.03.2001. It has been further stated that the injuries sustained are simple in nature and there are no fractures, injuries and also no lacerated and Abrasion treatments.

9.It is further argued that in the absence of any supportive documents that the deceased has undergone continuous treatment till the date of death (i.e after lapse of 4 ½ years), the claimant cannot claim any compensation at latter stage stating that the death occurred due to the injuries sustained in the accident, whereas Ex.P.7 revealed that they are only simple injury and the medical records as well as the evidence of the

document did not support the contention of the claimants. Hence, it is the argument of the appellant that absence of the clear fact that there is no evidence that the deceased died due to the accident, the finding of the Tribunal is improper.

10. On the other hand, the learned counsel for the claimant/1st respondent herein has submitted the the award passed by the tribunal is very much proper and reasonable, since the same is based on the evidence and records.

11. Per contra, the learned counsel for the appellant Insurance Company in support of his above arguments, has produced a copy of the Judgment reported in 2017 (2) TN MAC 81 Division Bench in the case of (C.M.A.No.278 of 2015 & C.M.P.No.1 of 2015 dated 24.04.2017) The Branch Manager, Oriental Insurance Co. Ltd., Thathuvacheri, Vellore Vs. Monohar (Deceased) 1.Rajkumar, 2.Bavani, 3.Kamalammal, 4.M.Dhinakaran. The relevant portion is extracted below :

'Motor Vehicles Act, 1988 (59 of 1988), Sections 166, 168 & 173 adjudication of claim --- Death of Injured claimant pending adjudication of claim -- Award of Compensation --- Challenge to --- Deceased, a Lorry Driver suffered injury in right elbow and loss of eye sight in accident on 12.05.2002 -- Deceased died after 5 years on 31.10.2007 pending disposal of claim --- whether death due to injuries suffered in accident -- No medical evidence disclosing any other body injury or continuous treatment in hospital or any complication leading to death despite treatment --- Tribunal, however, on basis of Wound Certificate and Medical records fixed disability at 100% and awarded Loss of Income at Rs.10,20,000 -- Awarding Compensation under other heads Viz. Loss of Consortium, Loss of Love & Affection, Funeral Expenses, etc., Tribunal awarded Total Compensation at Rs.10,66,000 as evidence against claim of Rs.1,00,000 --- Held, not proper in absence of any evidence that death occurred due to injuries suffered in accident --- Compensation as awarded by Tribunal fixing 100 % disability, set aside --- Applying maxim 'actio personalis moritur cum persona', held, claimants, at most, entitled to Compensation for expenses incurred --- Considering nature of injury Viz., elbow injury, High Court awarded Rs.18,000 towards Loss of Income for Period of Treatment, Rs.5,000 towards Medical Expenses, Rs.5,000 towards Transportation and Rs. 1,000

each under Nutrition and Damages to Clothes ----
Rs.10,66,000 awarded by Tribunal reduced to
Rs.30,000 --- Insurer permitted to seek for
refund of balance amount.

MOTOR ACCIDENT CLAIM ----Death of injured
Claimant --- Maxim ''Actio personalis moritur cum
persona'' (Personal action dies with parties to
cause of action) ''

12. The learned counsel for the appellant /Insurance Company has also produced a copy of another Judgment reported in 2017 (2) TN MAC 81 Division Bench in the case of (C.M.A.No.278 of 2015 & C.M.P.No.1 of 2015 dated 24.04.2017) The Branch Manager, Oriental Insurance Co. Ltd., Thathuvacheri, Vellore Vs. Monohar (Deceased) 1.Rajkumar, 2.Bavani, 3.Kamalammal, 4.M.Dhinakaran. The relevant portion is extracted below :

21. (i) A claim petition presented under Section 110-A of the Motor Vehicles Act, 1939 by the person sustaining bodily injuries in a Motor Accident, claiming Compensation for personal injuries as also for compensation towards Expenses, Loss of Income, etc.(Loss to the estate) cannot, on such person's death occurring not as a result or consequence of bodily injuries sustained from a Motor Accident, be prosecuted by his/her Legal Representatives.

13.The observations made in the Judgments cited supra is squarely applicable to the facts and circumstances of the present case on hand, since, it is clear from the evidence and records that the claimant has failed to furnish any relevant medical records to prove that the death occurred due to injury sustained by the claimant and also to prove that the deceased has taken continuance treatment till her death. Further, no witness or evidence has been examined to prove the fact that the injured has taken continuous treatment. Hence, in the absence of any relevant facts on the part of the claimant to prove the death of the deceased, this Court is of the view that the claimant is not entitled for any compensation for the death of the deceased.

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14. In view of the above, the compensation awarded by the tribunal for the death of of the deceased is liable to be set aside. Accordingly, the award passed in M.C.O.P.No.43 of 2013, Dated 11.07.2014 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri, is set aside.

15. In the result, the Civil Miscellaneous Petition is Allowed. No Costs. Consequently, connected miscellaneous petition is closed. The Appellant/Insurance company is permitted to withdraw the award amount, deposited if any.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsn

To

1.The Special District Judge,
Motor Accidents Claims Tribunal
Krishnagiri

2. The Record Keeper,
VR Section,
High Court, Madras.

+1 cc to M/s.S.Arunkumar Advocate sr67262

+1 cc to M/s.Mukund R.Pandian Advocate sr67765

CMA.No.109 of 2015
and
M.P.No.1 of 2015

rsv(co)
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