IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 21.02.2019]

[PRONOUNCED ON : 16.04.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2107 of 2011
and
M.P.No.1 of 2011

The New India Assurance Co. Ltd.,
No.45, Moore Street, Chennai - 1. ... Appellant

.. Vs ..

1. S.Devaki
2. S.Tamilarasan (Minor)
3. S.Deepa Dharsini (Minor)
Minors rep. by their mother & natural guardian S.Devaki
4. M.Muniammal
5. M/s. New World Wide Travels,
No.66/142, Swamy Naicken Street,
Chintadripet, Chennai - 2. ... Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 04.10.2010 made in M.C.O.P.No.2858 of 2006 on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

For Appellant : Mr.M.Krishnamoorthy

For RR-1 to 4 : Mr.S.Gangaram Prasad
For R-5 : Ex-parte

JUDGMENT

The insurance company is the appellant herein challenging the Judgment and Decree dated 04.10.2010 made in M.C.O.P.No.2858 of 2006 on the file of the Motor Accidents Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

2. The respondents 1 to 4 herein are the legal heirs of the deceased M.Sakrapani and they have preferred the claim petition before the Tribunal alleging that on 18.06.2006 at

about 22.30 hours when the injured/claimant was a pedestrian sleeping on the eastern side of platform on Anna Salai (near Buhari Hotel), Chennai, the first respondent's vehicle viz., Toyota Qualis Car bearing Registration No.TN-01-T-2819 came from North to South on the said road in a rash and negligent manner and ran over the left leg of the injured resulting in grievous injuries. The first respondent as owner and the second respondent as the insurer of the vehicle are liable to pay compensation. The legal representatives of the deceased viz., claimants 1 to 4, who are the wife, son, daughter and mother of the deceased respectively, have filed the claim petition claiming a sum of Rs.2,00,000/- as compensation.

3. It is represented that during the pendency of the appeal, the fourth respondent herein/fourth claimant namely Muniammal had died

on 13.05.2013 and the same is recorded. It is also represented that the fifth respondent herein remained ex-parte before the Tribunal.

4. In the counter statement filed before the Tribunal, the appellant herein/insurance company had disputed the alleged age, avocation, income of the deceased and manner of the accident.

5. Before the Tribunal, on behalf of the claimants, four witnesses were examined as P.Ws.1 to 4 and documents Exs.P.1 to P.6 were marked. On behalf of the respondents before the Tribunal, no witness was examined and no document was marked.

6. The Tribunal, after considering both oral and documentary evidence adduced on the side of the claimants, awarded a sum of Rs.6,73,000/- together with interest at 7.5% per annum as compensation to the claimants. Aggrieved against the said award passed by the Tribunal, the insurance company has preferred this appeal before this Court.

7. Learned counsel appearing for the appellant/insurance company would contend that initially, the injured has preferred the above M.C.O.P.No.2858 of 2006 for the injuries sustained in the accident which occurred on 18.06.2006 and during the pendency of the M.C.O.P., he died on 14.11.2008 and thereafter, his legal representatives have impleaded themselves as the claimants. The learned counsel for the appellant/insurance company would further contend that since the injured had died due to the injuries sustained in the accident, the accident being cause of the death, the claimants

converted the claim petition from the claim of compensation for injury to the claim of compensation for fatal.

8. It remains to be stated that with regard to the rash and negligence driving, one Mr.V.P.Sivaraman, who is the Sub-Inspector of Police, was examined as P.W.2, who had deposed that based on the complaint lodged by the victim Mr.Sakrapani, on 26.06.2006 at about 12.00 noon, FIR was registered as Crime No.213/T1/06 under Sections 337 IPC and 184 of the Motor Vehicles Act. He had further deposed that the driver of the offending vehicle viz., Toyota Qualis Car was arrayed as an accused and Charge Sheet has been filed against him before the Criminal Court and he has also pleaded guilty and paid the fine amount. Accordingly, the Tribunal has held that rash and negligence is on the part of the driver of the offending vehicle.

9. It remains to be stated that as per Ex.P.5-Case Sheet, initially, the claimant/deceased in this case has sustained fracture in left foot resulting in crush injury and bruisers and lacerations and he took treatment as an inpatient at Government Royapettah Hospital from 18.06.2006 to 02.07.2006 and after discharge, took treatment as outpatient for several months and due to the said injuries, he was unable to continue with his avocation and he was also not keeping good health and died on 14.11.2008.

10. In order to substantiate the amended plea that the injured subsequently had died due to the injuries sustained in the accident, the claimants have also examined P.W.3 and P.W.4 and it appears that the Tribunal has relied upon the evidence of P.W.4-Doctor, who had issued Ex.P.6-probability certificate showing the cause of the death.

11. For better appreciation, the essential evidence of P.W.3 and P.W.4 are extracted hereunder:-

> "Mr.K.Johnson Jawahar, Medical records Technicians from Government Royapettah Hospital was examined as P.W.3, through whom Ex.P.5-Case Sheet was filed. On perusal of the same, it is mentioned that the victim Sakrapani sustained fracture of PPX 5th toe left and was treated as inpatient from 04.06.2006 to 19.07.2006.
>
> P.W.4-Doctor was also examined who had deposed that the victim late Sakrapani sustained fracture of PPX 5th toe in left foot, raw area in left foot due

> to crush injury (split skin grating done) wound oozing and unhealed and treated as inpatient at Government Royapettah Hospital as inpatient from 18.06.2006 to 19.06.2006 wherein the fracture in left foot was treated conservatively and the raw area in left foot was surgically covered with split skin graft. P.W.4 further deposed that at the time of discharge, the wound on his left foot was raw and unhealed and he has come to the conclusion that his death was due to non-healing of the wound in his left foot and such non-healing of the wound in his opinion most probably due to Septicemia, other causes of sudden death may be due to dilatation of Splanchmic vessels as a result of shock induced by Septicemia."

12. It appears that relying upon the decision reported in 2009 (2) TNLJ page 116 [The Oriental Insurance Company Limited rep. by its Divisional Manager, Chennai Vs. N.Meenal and others], the Tribunal has held that in the absence of post-mortem report, it cannot be stated that the death was not due to accident and accepted the plea of the claim petitioners and treated the claim petition as a fatal case and adopted multiplier of 18 and fixed the age of the victim as 30 and the notional income of the deceased as Rs.4,500/- per month, since it is alleged that he was working as a driver of the rickshaw.

13. Learned counsel appearing for the appellant/insurance company would contend that the accident has taken place on 18.06.2006 and the injured was said to have died on 14.11.2008 i.e., 29 months after the accident and there is no connection between the nature of the injury and the cause of the death. In the absence of any positive evidence correlating the death to the injuries sustained in the accident, the Tribunal has committed an error and hence, prayed for allowing of the appeal.

14. Per contra, the learned counsel appearing for the claim petitioners/respondents 1 to 4 would contend that the insurance company cannot be allowed to raise such a plea, in the absence of any pleadings by way of additional counter statement stating that the injuries sustained by the deceased are not due to the accidental injuries.

15. After hearing both sides and after perusing the medical evidence of P.W.4-Doctor, who had issued Ex.P.6-Probability Certificate indicating the accidental injury as a cause of death, it is seen that the insurance company has filed counter statement only at the stage of the claim for injury and after amendment, they have not filed any counter

statement. On perusal of the point for determination, it appears that both the parties have adduced the evidence on that score. After going through the evidence of P.W.4-Doctor, who opined that the death is probable due to septicemia but on going through the evidence of Doctor and the summary of cash sheet under Ex.P.5 the fracture in the left foot was treated conservatively and the raw area which was subsequently covered with skin craft and no document has been produced to show as to what nature of the treatment has been taken by the injured and how the injury caused the death and hence, this Court is of the considered view that the evidence of P.W.4-Doctor, who had issued probability certificate does not inspire the confidence of the Court on multiple reasons.

16. It remains to be stated that in the cross-examination of P.W.4, he has categorically stated that at the time of the discharge, the wound on the left foot of the injured was raw and unhealed. However, he has come to the conclusion that the death was due to non healing of the wound in his left foot. However, the said opinion is not proved by any supporting document and furthermore, his opinion does not appears to be based upon the Ex.P.5-cash sheet. In the absence of any positive material indicating any septicemia or indicating the non healing of the left foot, this Court is of the considered view that Ex.P.6 cannot be acted upon and accordingly, the finding rendered by the Tribunal that the original claim petitioner, now the deceased, died due to the accidental injury stands set aside and the compensation awarded as if treating the case as a fatal in nature also stands set aside. It appears that the original claimant was died after 29 months from the date of the accident viz., 18.06.2006 and he died on 14.11.20087.

17. Following the judgment of this Court in C.M.A.No.1031 of 2018 [The New India Assurance Company Ltd., Vs. Magamayi and others], the compensation awarded by the Tribunal is modified as follows:-

The Tribunal, based upon the evidence, arrived at the age of the deceased as 30 years and fixed the notional income at Rs.4,500/- p.m. and the same are confirmed and pecuniary loss caused to the family is re-assessed at Rs.4,500 X 29 = Rs.1,30,500/-. Further, this Court awards a sum of Rs.5,000/- towards transportation, a sum of Rs.5,000/- towards attender charges and a sum of Rs.3,000/- towards extra nourishment. In all, the respondents 1 to 4 herein/claimants are entitled to a sum of Rs.1,43,500/- as total compensation.

18. In the result,

I. This Civil Miscellaneous Appeal is allowed modifying the compensation from Rs.6,73,000/- to

Rs.1,43,500/-. Out of the said modified amount of Rs.1,43,500/-, the first respondent herein/first claimant is entitled to a sum of Rs.53,500/-, respondents 2 and 3 herein/claimants 2 and 3 are entitled to a sum of Rs.30,000/- each and the fourth respondent herein/fourth claimant is entitled to a sum of Rs.30,000/-.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. The appellant-Insurance Company is directed to deposit the modified amount within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV. On such deposit being made, the first respondent herein/first claimant is permitted to withdraw her share amount along with proportionate interest and costs, less the amount already withdrawn, if any.

V. The Tribunal is directed to deposit the share of the minor respondents 2 and 3/claimants 2 and 3 in any one of the Nationalised Bank under reinvestment scheme, till they attain majority.

VI. Since the fourth respondent herein/fourth claimant had died, her legal representatives are permitted to withdraw her share amount, by filing necessary applications before the Tribunal.

VII. As this Court has reduced the compensation amount from Rs.6,73,000/- to Rs.1,43,500/-, the appellant/insurance company is permitted to withdraw the excess amount, lying in the credit of M.C.O.P.No.2858 of 2006.

VIII. No order as to costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

Jrl

To

1. The VI Judge, Court of Small Causes,
   Motor Accidents Claims Tribunal,
   Chennai.

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

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.37614

+2cc to Mr.G.Balaji Prasad, Advocate SR.No.37372

C.M.A.No.2107 of 2011

SS(CO)
GMY(13/11/2019)