



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2474 of 2015

N.Ranganathan (Died)

1.Rani
2.Sakila

.. Appellants / Petitioner

(1,2-appellants are impleaded as per order in I.A.No.154/12on
31.07.2012)

Vs.

1. P.Sivaram

2. United India Insurance Co. Ltd.,
No.78, Chittoor Road,
Thiruttani.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under
Section 173 of Motor Vehicles Act, 1988, against the Judgment
and Decree dated 26.02.2015 made in M.C.O.P.No.44 of 2012 on the
file of the Motor Accident Claims Tribunal, Sub Court,
Thiruttani.

For Appellants : Mr.K.Varadhakamaraj

For R1 : Ms.S.A.Udaya Kumari for
Mr.D.Anandan

For R2 : Mr.D.Bhaskaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the
Judgment and Decree dated 26.02.2015 made in M.C.O.P.No.44 of
2012 on the file of the Motor Accident Claims Tribunal, Sub
Court, Thiruttani.

2.Mr.D.Bhaskaran, learned counsel takes notice for the
second respondent-Insurance Company.



3.The appellants are the claimants in M.C.O.P.No.44 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Thiruttani. Initially one Ranganathan filed the said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.03.2007. Pending claim petition, the said Ranganathan died and his legal heirs were impleaded as claimants.

4.The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition.

5.Challenging the award of the Tribunal dated 26.02.2015 made in M.C.O.P.No.44 of 2012 dismissing the claim petition, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that the Tribunal erred in dismissing the claim petition on the ground that the death is not due to the injuries sustained in the accident. The claimants examined the Doctor as P.W.3 and the Tribunal has not considered the evidence of Doctor. The Tribunal based on the evidence of P.W.3/Doctor, ought to have held that death is due to injuries sustained in the accident. The Tribunal erred in dismissing the claim petition on the ground that appellants are not entitled to maintain the claim petition after the death of injured person. The Tribunal has not awarded any amounts under the head of loss of estate and loss of earnings and prayed for allowing the appeal.

7.Per Contra, Mr.D.Bhaskaran, the learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not proved that the death was due to the injuries sustained in the accident. In view of the same, the Tribunal has rightly dismissed the claim petition and appellants are not entitled for any compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the second respondent and perused the materials available on record.

9.From the award of the Tribunal it is seen that the appellants have examined P.W.3/Doctor to prove that the death of the first claimant viz.,Ranganathan was due to the injuries sustained by him in the accident. The appellants have filed affidavit of P.W.3/Doctor in the typed set of papers. P.W.3/Doctor in his proof affidavit stated that "the probable cause of death was due to the EMBOLISM (CARDIO PULMONARY) from the operated side LEFT HIP in Implant". In the cross examination also P.W.3/Doctor has stated so. The respondents have not examined any Doctor to disprove the evidence of P.W.3/Doctor and



to prove that the deceased did not die due to the injuries sustained by him in the accident. The Tribunal without properly considering the evidence of P.W.3/Doctor, rejected the same on the ground that P.W.3/Doctor is not competent person to determine the cause of death and his conclusion is on presumption and assumption. The said reasoning is erroneous. Further the Tribunal has dismissed the claim petition in its entirety. The legal heirs of the deceased are entitled to compensation for medical expenses, attendant charges, even if the death was not due to the injuries sustained in the accident. Considering the evidence of P.W.3/Doctor and any contra evidence to disprove the said evidence, this Court is of the considered view that the death of the first claimant was due to the injuries sustained by him in the accident. In view of the same, the award of the Tribunal dated 26.02.2015 made in M.C.O.P.No.44 of 2012 is set aside. The M.C.O.P. is remanded to the Tribunal to decide the quantum of compensation payable to the appellants. The M.C.O.P. is of the year 2012. The Tribunal is directed to dispose of the M.C.O.P. Within three months from the date of receipt of a copy of this judgment. With the above direction this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gbi/krk

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Thiruttani.
2. The Section Officer,
VR Section, High Court, Madras.

+1 cc to M/s.K.Varadha Kamaraj, Advocate, S.R.No.7660

+1 cc to M/s.D.Anandan, Advocate, S.R.No.8108

+1 cc to M/s.D.Bhaskaran, Advocate, S.R.No.8050

C.M.A.No.2474 of 2015

PM(CO)
SSM(23/09/2019)