

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.02.2019
Pronounced on : 25.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.888 & 1467 of 2011

C.M.A.No.888 of 2011:

United India Insurance Company Limited,
No.33, Whites Road, Royapettah,
Chennai. ...Appellant/2nd Respondent

Versus

S.N.Swaminatha Vajapayer (died)
1.S.Meenakshi
2.S.Swamiraman
3.S.Mahalakshmi
4.T.Sri Vidya ...Respondents/Petitioners
5.Ghouse Basha
6.R.Santhanakrishnan
7.The New India Assurance Co. Ltd.,
New No.204, Kuthceri Road,
Mylapore, Chennai - 600 004. ...Respondents/Respondents 1,3,4

(Respondents 5 & 6 are set ex-parte
in lower Court)

C.M.A.No.1467 of 2011:

S.Swaminatha Vajapayer (died)
(Amended as per order in M.P.No.2517 of
2009 Dated 04.10.2010 by legal heirs)

1.S.Meenakshi
2.S.Swamiraman
3.S.Mahalakshmi

4.T.Sri Vidya ... Appellants/Petitioners

Versus

- 1.Ghouse Basha
(was set ex-parte in the Trial Court)
- 2.United India Insurance Company Limited,
No.33, Whites Road, Royapettah,
Chennai - 600 014.
- 3.R.Santhana Krishnan
- 4.The New India Assurance Co. Ltd.,
New No.204, Kuthceri Road,
Mylapore, Chennai - 600 004. Respondents/Respondents
(Was set exparte in the Trial Court)

COMMON PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 10.12.2010, in M.C.O.P.No.4043 of 2005 on the file of the Motor Accidents Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

For Appellant(s) : Mr.D.Bhaskaran
(in CMA.No.888 of 2011 & for R2
in CMA.No.1467 of 2011)

For Respondents : Mr.M.Swamikannu
(for R1 to R4 in CMA.No.888 of 2011
& Appellants in CMA.No.1467 of 2011)

Ex-parties : R5 & R6 in CMA.No.888 of 2011
R1 & R3 in CMA.No.1467 of 2011

Ms. Salomi for R4 in
C.M.A.No.1467 of 2011 and
R7 in C.M.A.No.888/2011.

COMMON JUDGMENT

The present appeals have been filed against the Judgment dated 10.12.2010 passed in M.C.O.P.No.4043 of 2005, on the file of the Motor Accidents Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

2.Challenging the quantum of compensation, the appellant/ Insurance Company has filed CMA.No.888 of 2011. As against the very same award dated 10.12.2010, the deceased, claimant in the original claim petition, has filed CMA.No.1476 of 2011, seeking enhancement of compensation. After the death of the original

claimant, during the pendency of this appeal, his legal heirs were brought on record as per the order dated 04.10.2010 made in MP.No.2517 of 2009.

3.As the appeals arise out of one and the same award, they are taken up for hearing together and are disposed of by this common Judgment.

4.For the sake of convenience, the parties to these appeals are referred to as Claimants and Insurance Company in these appeals.

5.A claim was preferred before the Tribunal informing that at about 7.00 p.m. on 22.08.2005, when the deceased was traveling as a passenger in an Auto-rickshaw bearing Reg.No.TN-22-H-9210 in Thambu Chetti Street from north to south, another Auto-rickshaw bearing Reg.No.TN-05-K-3220 came from Eraaballu Chetti street driven by its driver in a rash and negligent manner resulting in hitting the deceased claimant in the original claim petition and he sustained injuries and fractures in the said accident. In spite of the best treatment given, due to severity of the injuries sustained by the deceased claimant, he died on 07.09.2006 due to the injuries sustained in said accident. Hence, the deceased claimant filed the claim petition before the Tribunal, claiming a sum of Rs.6,00,000/- as compensation.

6.The claim petition was resisted by the Insurance company by filing counter statement and contending that the deceased was aged 75 years at the time of occurrence and his death cannot be attributed to the injuries sustained by him in the accident. Hence, he prayed for dismissal of the claim petition.

7.Before the Tribunal, on behalf of the claimant, two witnesses were examined and nine exhibits were marked. On behalf of the appellant insurance company one witness was examined and two exhibits were marked.

8.Based upon the oral and documentary evidence registered before the Tribunal, a sum of Rs.1,76,000/- with interest 7.5% p.a, was awarded as compensation. Having not been satisfied with the award of compensation Rs.1,76,000/- to the deceased has, filed the appeal and the Tribunal held that the accident had taken place due to the rash and negligent driving by the driver of the first respondent vehicle and accordingly held that respondents 1 & 2 before the Tribunal are jointly and severally liable to pay the compensation and the 3rd & 4th respondents are exonerated from the same. The rash and negligent on the part of the driver of the first respondent vehicle is not in dispute and the same is hereby confirmed.

9. On the point of quantum, the learned counsel appearing for the Insurance Company has preferred the C.M.A.No.888 of 2011 contending that the amounts awarded under the various heads are exorbitant, considering the period of treatment being only 9 days. It is also contended that the injured/claimant was aged and the injuries are simple in nature, therefore, he could not have died due to the injuries sustained in the said accident. In the absence of any positive evidence, the award of compensation passed by the Tribunal is exorbitant. The compensation under the head mental agony to the family does not arise and therefore the amount awarded under the said head is liable to be set aside.

10. Per contra, the learned counsel appearing of the claimants/appellants in C.M.A.No.1467 of 2011 would contend that the deceased was alive from 22.08.2005 to 07.09.2006 for more than a year during which period he was completely bed ridden and unable to do any work leading to loss of earning and also loss of pecuniary benefits and loss of estate of the deceased. Hence, he claimed a sum of Rs.4,30,000/- towards loss of expectation of life. However, the trial Court has awarded a meager amount, as compensation and it warrant enhancement. The finding of the Tribunal that the deceased claimant has not died due to the accidental injuries is erroneous and seeks for enhancement of compensation.

11. On the point of quantum of compensation, I have heard the counsel appearing for the respective parties and perused the materials on record.

12. It is not in dispute that due to the injuries sustained in the accident, the deceased took treatment for 9 days as an in-patient in New National Hospital, Chennai. At that time of accident, the age of the deceased/claimant was 75 years and he is said to have engaged in Purohit, performing Ganapathi Homams and other poojas at home and offices. It is seen from the records that as per Ex.P2 the discharge summary from the New National Hospital, the deceased/ appellant sustained scalp injury, injury in left pinna and contusion over left temporal region, abrasion on left shoulder and left thigh and there is no other document to show that the injured took further treatment for the injuries sustained in the said accident after the date of discharge till his death. Ex.P7-O.P. Chit clearly indicate that the deceased/claimant had taken treatment as an inpatient from 22.08.2005 to 29.08.2005 and no Doctor was examined to prove that the death was due to the accidental injuries and nowhere it is mentioned that the deceased/claimant suffered chest or head injury. As per the death certificate Ex.P8 the injured died on 07.09.2006.

13.It appears that no postmortem certificate was filed to show the cause of death before the Tribunal. The medical bills are relevant to the year of 2005 only and it appears that there is no evidence placed to show the nature of injuries sustained by the injured/Swaminatha Vajapayer and that such injuries are the cause for his death and accordingly the Tribunal has rightly come to the conclusion that the deceased/Swaminatha Vajapayer has not died due to the accidental injuries, hence, such finding does not warrant any interference by this Court and accordingly the CMA.No.888 of 2011 filed by the Insurance company is liable to be partly allowed and the CMA.No.1467 of 2011 filed by the appellants/claimants is liable to be dismissed.

14.On the point of quantum of compensation, as rightly pointed out by the learned counsel appearing for the appellant/Insurance company, the compensation awarded towards mental agony does not arise especially when the deceased died long after the accident. Therefore, the compensation awarded under the head mental agony shall stands deleted. Taking into consideration of the fact that after the accident the injured has not attended his duty, for the loss of earning a sum of Rs.36,000/- has already been awarded by the Tribunal and the same is hereby confirmed.

15.Taking note of the fact nature of injuries sustained and the period of treatment, this Court is inclined to enhance the heads of Transportation, Attendant charges and Extra-nourishment from Rs.25,000/- to Rs.30,000/- each. The Tribunal did not award any amount towards Loss of amenities, hence, a sum of Rs.10,000/- is hereby awarded. Accordingly, the compensation awarded by the Tribunal is re-assessed as indicated above in the CMA.No.888 of 2011 is as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of earnings	Rs.36,000/-	Rs.36,000/-
Transportation to Hospital	Rs.25,000/-	Rs.30,000/-
Cost of attendant	Rs.25,000/-	Rs.30,000/-
Extra-Nourishment	Rs.25,000/-	Rs.30,000/-
Medical expenses	Rs.15,000/-	Rs.15,000/-
Mental agony to the family	Rs.50,000/-	-
Loss of amenities	-	Rs.10,000/-
Total	Rs.1,76,000/-	Rs.1,51,000/-

16.In the result, the CMA.No.888 of 2011 filed by the Insurance company is partly allowed and the award amount of

compensation is reduced from Rs.1,76,000/- to Rs.1,51,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation and consequently, CMA.No.1467 of 2011 filed by the appellants/ claimants is dismissed.

(ii) The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit, the claimants are permitted to withdraw the modified award amount along with interest and costs, after adjusting the amount if any, already withdrawn.

(iv) The appellant/Insurance Company is permitted to withdraw the excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.4043 of 2005 on the file of the Motor Accidents Claims Tribunal, IV Judge, Court of Small Causes, Chennai, if the entire award amount has already been deposited by them. There shall be no order as to costs.

s/d-

Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

klr
To

1.The Motor Accident Claims Tribunal
IV Judge, Court of Small Causes, Chennai.

2.The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 CC to Mr.D.Bhaskaran, Advocate sr 39745
+1 CC to Mr.M.Swamikannu, Advocate sr 39774
+1 CC to Mr.C. Ramesh Babu, Advocate sr 39805.

C.M.A.Nos.888 & 1467 of 2011

PM(CO)
SP(06/02/2020)