

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2019

PRONOUNCED ON : 06.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.550 of 2015

Varadhan (Died)

S/o Ramasamy

1) Revathi

2) Kanniyakumari

3) Jeyanthi

4) Baburaj

Appellants/Petitioner

Vs

1) Govindaraj (Exparte before Tribunal)

2) National Insurance Co. Ltd,
Third Party Motor Claims Office,
No.751, Anna Salai,
Chennai.

Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgement passed in M.A.C.T.O.P.No.42 of 2006 dated 25.04.2013 on the file of the Motor Accident Claims Tribunal, IV Additional District Judge, Ponneri.

For Appellant : M/s.A.Subadra
for M/s.M.Malar

For Respondents : M/s.N.B.Surekha
for R2

R1- Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred against the judgement and decree made in M.A.C.T.O.P.No.42 of 2006 dated 25.04.2013, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ponneri.

2. The Civil Miscellaneous Appeal has been preferred by the claimants aggrieved against the award made by the Tribunal at a sum of Rs.1,80,000/- (Rupees one Lakh Eighty thousand only), as against the total claim made for Rs.6,00,000/-. Initially one Varadhan filed the said claim petition, claiming a

sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.12.2005. Pending claim petition the said Varadhan died and his legal heirs were impleaded as respondents.

3. On 28.12.2005, at about 08.15 hrs, when the deceased person was riding his cycle near Raj Bhavan main gate, Taluk Office Road, Chennai, a car bearing Reg No.TN 10 L 2271 driven by its driver, on the same direction, in over speed, rash and negligent manner dashed against the deceased's vehicle, and as a result of the accident, the deceased Varadhan sustained injuries. The claimant contended that the accident occurred only due the negligent driving of the driver of the said car and hence, the 1st respondent, owner of the said car and the 2nd respondent, the insurer of the said car are liable to pay compensation of Rs.3,00,000/- to him.

4. The second respondent Insurance Company totally denied the mode of accident and also denied the sum claimed by the claimant under various heads. In the absence of any evidence, the tribunal has given a finding that it is the driver of the maruthi car bearing Registration No. TN10L2271, who has driven the vehicle in rash and negligent manner and caused the accident by hitting against the deceased person.

5. While determining the compensation, the tribunal has observed the fact that the deceased sustained grievances injury in his head and all over the body and after taking treatment in number of hospitals, the claim application has been preferred and during the pendency of the said application, the claimant Varadhan died. Hence, the tribunal has found that the claimants who are the legal heirs of the deceased Varadhan are entitled to get compensation only for medical expenses and awarded a sum of Rs. 1,80,000/- to them. Aggrieved against the said Judgement and decree, the legal heirs of the deceased Varadhan have preferred this appeal.

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

7. In the grounds of appeal, the appellants contended that the tribunal has awarded the compensation only for medical expenses at a sum of Rs. 1,80,000/-, as against the total claim of Rs. 6,00,000/-. The Tribunal has failed to consider the evidences of the appellants/claimants that the death caused to the claimant only due to the injuries sustained by him in the said accident. The injured was also given treatment in various hospitals on various dates. Hence, the appellants contend that the injured was under continuous treatment till his death and his death was occurred only due to the injuries sustained by him. But, the tribunal without considering the same, has awarded

compensation only for medical expenses, which is also on the meagre side.

8. The appellant further contended that the tribunal ought to have given compensation for the death of Varadhan, who died due to the injuries sustained by him in the accident. The other grievance of the claimants is that the tribunal has not even awarded compensation under the heads of transport expenses, treatment at various hospitals and extra nourishment and also not considered the facts that during the said treatment period, they would have incurred some attender's charges and not awarded any amount under the heads of 'attender charges' and 'mental agony'.

9. The appellants vehemently contended that the deceased Varadhan met with an accident on 28.12.2005 and sustained severe head injury and also injuries all over his body. He was given treatment at various hospitals namely, Sri Balaji Hospital, K.H.M. Hospital, Sundaram Medical Foundation hospital and Corporation Hospital. He died on 30.10.2006. Hence, the appellants argue that due to the severe injuries sustained by the deceased Varadhan in the accident, he died on 30.10.2006. The date of the accident is 28.12.2005 and he died on 30.10.2006. The Appellants also brought to the notice of this Court, the discharge summaries Exs.B3,4,5,6,7,8,9 and 10, which all are issued by the concerned hospitals, during the relevant period, when the deceased was under treatment.

10. A perusal of the records, it is seen that the appellants have also filed the medical bills Ex.P12 and the death Certificate Ex.P14 and Leave Certificate Ex.P13 before the Tribunal. PW1, who is the wife of the deceased has deposed before the tribunal, in which she has stated that the deceased Varadhan has died only due to the injuries sustained by him. However, no Doctor was examined on the side of the appellants to prove that the deceased has died only due to the injuries sustained by him in the accident. There are two witnesses examined on the side of the appellant, one is PW1 is wife of the deceased, PW2 Parthasarathi. Based on the evidences and documents filed on the side of the appellants, the tribunal has observed that the accident occurred on 28.12.2005 due to the negligence on the part of the driver of the said maruthi car and the deceased also sustained injuries. But, no witness was examined to prove the fact that only because of the said injuries, Varadhan died on 30.10.2006 and there is no relevant document filed before the tribunal except the medical bills and the discharge summaries. Hence, the tribunal has given a finding that the claimants are entitled only for a sum of Rs. 1,80,000/- as compensation for the medical expenses incurred by them. The appellants are very much aggrieved by the observation that in injuries Varadhan taken treatment from 28.12.2005 till the

date of his death. The Tribunal ought to have given a finding that the injuries caused his death. Whereas, the tribunal has not considered the said aspect and awarded only a sum of Rs.1,80,000/- for the medical expenses which is not fair.

11. On the other hand, the second respondent/Insurance Company contended that no expert was examined before the tribunal to prove the fact that the deceased Varadhan has died only due to the injuries sustained by him. It is further contended by the second respondent that thought the injured has produced number of discharge summaries in respect of the treatment taken by him from 28.12.2005 till his death, they have not proved the fact that the deceased was given treatment for continuous period, hence, the same has to be considered as illegal.

12. It is seen from the records that the fact that the death of the deceased was caused due to the said injury was not proved. However, the deceased was taking treatment in number of Hospitals during the relevant period which has to be considered and hence, apart from awarding a sum of Rs.1,80,000/- towards medical expenses, this Court inclined to award a reasonable sum to the claimants. Since the claimants have lost the income of the deceased during the period of treatment, loss of income is awarded to the claimants for six months at Rs.30,000/-. The claimants would have also suffered mental agony on seeing the injured person's sufferings and hence for 'mental agony' a reasonable sum has to be awarded and accordingly, a sum of Rs.25,000/- is awarded towards the same. Since the injuries sustained by the deceased are grievous in nature, surely, attender's charges would have been incurred by them and therefore, a sum of Rs.35,000/- is awarded towards attender's charges. Similarly, this court is also inclined to grant a sum of Rs.15,000/- towards Transport expenses and a sum of Rs.15,000/- towards extra nourishment. Thus, the compensation awarded by this Court is as follows:

S.No	Head	Awarded by the Tribunal	Enhanced Compensation (in.Rs.)
1.	Medical expenses	Rs.1,80,000/-	Rs.1,80,000/-
2.	Mental agony	Nil	Rs.25,000/-
3.	Extra nourishment	Nil	Rs.15,000/-
4.	Transportation	Nil	Rs.15,000/-
5.	Attender's charges	Nil	Rs.35,000/-
6.	Loss of income	Nil	Rs.30,000/-
Total		Rs.1,80,000/-	Rs.3,00,000/-

13. In the result;

(i) The Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,80,000/- is enhanced to Rs.3,00,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. No costs. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation.

(ii). Since, this Court by an order dated 11.03.2015, while condoning the delay of 217 days in filing the appeal, has ordered that the claimants are not entitled to the interest for the said delay period, the claimants are not entitled for the interest amount for the period of 217 days.

(iii). The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their share of the enhanced award amount, on the basis of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmm

To

The Motor Accidents Claims Tribunal,
IV Additional District Judge, Ponneri.

+1cc to Mr.M.Malar, Advocate, S.R.No. 77512

+1cc to Mr.N.B.Surekha, Advocate, S.R.No. 77503

C.M.A.No.550 of 2015

PA (CO)
GN (30/09/2020)