IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.3067 of 2019
and
C.M.P.No.16801 of 2019

United India Insurance Co Ltd.,
Third Party Claims Cell,
Greams Road, 40-42,
Murugesa Naicker Complex,
4th Floor, Chennai - 9. ... Appellant /2nd Respondent

Vs.

S.Wilson Selvakumar (died)

1.Meeka

2.Sofia

3.Sindhiya

4.Selvadurai

5.Glory
(Respondents 1 to 5 have been impleaded as
per order in MP.No.3355/2014 dated 28.11.2014)

6.A.M.Sanjeevi ... Respondents/Petitioners
& 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.08.2018 made in M.C.O.P.No.3279 of 2009 on the file of Motor Accident Claims Tribunal, (Special Sub Court-I / Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran

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J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 06.08.2018 made in M.C.O.P.No.3279 of 2009 on the file of Motor Accident Claims Tribunal, (Special Sub Court-I / Court of Small Causes), Chennai.

2.The appellant/Insurance Company is the respondent in M.C.O.P.No.3279 of 2009 on the file of Motor Accident Claims Tribunal, (Special Sub Court-I / Court of Small Causes), Chennai. Initially one Wilson Selvakumar filed the said claim petition, claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.06.2009. Pending claim petition the said Wilson Selvakumar died and his legal heirs were impleaded as respondents. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the 6th respondent and directed the appellant/Insurance Company to pay a sum of Rs.10,52,500/- as compensation to the respondents 1 to 5. Challenging the said award dated 06.08.2018 made in M.C.O.P.No.3279 of 2009, granting compensation to the respondents 1 to 5, the appellant/Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in granting huge sum of Rs.10,52,500/- as compensation without any basis. In the absence of any proof that the subsequent death was due to injuries sustained. The Tribunal failed to note no Doctor was examined and no medical evidence filed to show that subsequent death was due to injuries sustained in the accident and there is also no close proximity with the injury and subsequent death. Further contended that there are no records to show that the deceased had taken continuous treatment. It is further contended that the Tribunal without any adjudication to the effect that the deceased died due to injuries sustained simply has granted compensation. In the absence of any material evidence, the total compensation awarded by the Tribunal is very excessive and hece prayed for setting aside the award of the Tribunal.

4.Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

5.From the materials available on record, it is seen that the deceased met with an accident on 26.06.2009, initially the

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claim application was filed by the injured person and during the pendency of the claim application he died and the claimants have brought on records as legal heirs of the deceased. There were no documents and evidence placed before the Tribunal for the injuries sustained by the deceased as well as the treatment given to him. It is observed that during the pendency of the claim application, he died on 23.09.2009. PW1 has clearly deposed before the Tribunal that immediately after the accident, he was admitted in the Meenakshi Medical College Hospital and further treatment was given at Puthur Hospital for the fractures and the from the date of accident he was under continuous treatment and he died on 23.09.2009. Hence apart from the postmortem certificate, respondent's who are the appellant herein also not filed any additional counter after the amendment made by the respondents/claimants. The Tribunal has given finding that the deceased died only due to the injuries sustained by him in the said accident. The grievance of the appellant herein is that in the absence of any relevant documents caused on death or the death resulted only due to the injuries are not placed before the Tribunal. Hence the finding of the Tribunal is that the death occurred only due to the injuries and the sum awarded by the Tribunal under various heads is highly improper. On the side of the appellant it is argued by quoting case law reported in "2017(2) TNMAC" in the case of "The Branch Manager, M/s.Oriental Insurance Co. Ltd. Vellore Vs. Manohar (Deceased) & Others" and "C.M.A.No.835 of 1995" in the case of "The Managing Director, Pandiyan Roadways Corporation, Madurai Vs. S.Rajalakshmi & Others" is extracted hereunder:

> "In this context I have also considered the judgment of the Supreme Court reporte din Melapurath Sankunni Ezhuthassan V. Thekittil Gopalankutty Nair, 1986(1) S.C.C. 118 and M.Veerappa Vs. Evelyn Segulira, 1988 (1) S.C.C., 556. A Division Bench of this Court has also held in C.P.Kandaswamy V. Mariappa Stores, 1974 A.C.J.362, that in the case of an injured claimant the cause of action will not survive in respect of the legal representatives of the claimant. In all the above decisions, the Division Bench as well as the Supreme Court had taken note of Section 306 of the Indian Succession Act and have held the claim for compensation in respect of personal injuries will not be available for the legal representatives provided the death was not caused as a result of the accident. The Supreme Court has also pointed out that the position would be different if the suit for damages had

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resulted in a decree in favour of the plaintiff in which case the decree amount would form pat of the estate of the deceased to which the legal representatives would be entitled to. But where no such decree has been passed, the legal representatives of the claimant will not be entitled to compensation due towards personal injuries are concerned."

6.On perusal of records, it is clear that the respondents/claimants have not furnished any relevant documents even no additional counter was filed by the respondents/claimants to prove before the Trial Court that the death resulted only due to the injuries sustained by him in the accident. Hence, this Court is of the view that in the absence of any relevant documents the finding of the Tribunal is not proper and the sum awarded as compensation is also highly excessive without any proof. In view of the documents especially Ex.P2/Accident Register copy which is the only documents to prove the nature of injuries and considering the fact that there is no disability certificate for the said injuries. This Court is of the view that the Tribunal erred in arriving at the conclusion that the death occurred, due to the injuries sustained in the said accident. The sum awarded by the Tribunal under various heads are also not proper and heads to be reduced. Accordingly, this Court by considering the nature of injuries and documents filed by the claimants, this Court modifies the sum awarded by the Tribunal under various heads as below:

S.No	Description	Amount awarded by this Court (Rs)
1.	Injuries	Rs.50,000/-
2.	Miscellaneous and attendent charges	Rs.15,000/-
3.	Conveyance expenses	Rs.10,000/-
4.	Extra nourishment	Rs.10,000/-
5.	Loss of income	Rs.15,000/-
	Total	Rs.1,00,000/-

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7.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,52,500/- is reduced to Rs.1,00,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs. Consequently connected Miscellaneous Petition is closed.

8.The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 5 are permitted to withdraw their respective share of the modified award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. 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.3279 of 2009 on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No-1/Court of Small Causes), Chennai, if the entire award amount has already been deposited by them.

Sd/-
Assistant Registrar(Ad I)

//True Copy//

Sub Assistant Registrar

mtl
To

1.The Special Subordinate Judge No-1,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

+1cc to Mr.D.Bhaskaran, Advocate SR.69254

C.M.A.No.3067 of 2019
and
C.M.P.No.16801 of 2019

BR(CO)
CB(06/02/2020)

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