



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.721 of 2014

1.Perumalammal

2.Muthu Mari

3.Ramamoorthy

4.Vairam

5.Arumugam

6.Kartheeswari

.. Appellants/
Claimants 2 to 7

Vs.

1.Sundarakaalai

2.The Branch Manager,
New India Assurance Limited,
Thenkasi Road, Rajapalayam,
Virudhunagar District.

.. Respondents/
Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order, dated 05.02.2010, passed in M.C.O.P.No.98 of 2006 by the Motor Accident Claims Tribunal / Sub Court, Sivakasi.

For Appellants : Mr.P.Pethu Rajesh

For Respondent No.1 : No appearance

For Respondent No.2 : Mr.M.S.Sureshkumar

JUDGMENT

It is a case of fatal. The manner of the accident is not in dispute. The claim petition has been filed seeking to award a compensation of Rs.3,00,000/- for the death of the deceased. The Tribunal has dismissed the claim petition on the ground that the



deceased was not died due to the accident. The appellants / claimants have filed this appeal seeking to award compensation.

2.The learned counsel appearing for the appellants / claimants would submit that the accident has occurred due to the rash and negligent driving of the driver of the first respondent and the offending vehicle has been insured with the second respondent / Insurance Company. After the accident, the deceased was admitted in Government Hospital, Sivakasi and thereafter, referred to the Government Hospital, Virudhunagar, where he took treatment for more than 30 days and succumbed due to the injuries. The Court below without considering Ex.A.5, Accident Register, has erroneously come to a conclusion that there is no nexus between the accident and the death of the deceased. He would further submit that the deceased was working as a coolie and earning a sum of Rs.3,000/- as monthly income. Thus, he prayed to set aside the dismissal order passed by the Tribunal and to award reasonable compensation to the claimants.

3.The learned counsel appearing for the second respondent / Insurance Company would submit that the accident has occurred due to the negligence on the part of the deceased. Due to accident, the deceased sustained only abrasions on his hip, hands and legs. During treatment, the deceased ran away from the hospital and he died after 68 days from the date of accident. Therefore, there is no nexus between the accident and the death of the deceased. The Tribunal after considering the above, has rightly dismissed the claim petition. Thus, he prayed to dismiss the appeal.

4.Heard the learned counsel appearing for the appellants / claimants and the learned counsel appearing for the second respondent / Insurance Company and perused the materials available on record.

5.The date of accident is on 14.08.2006. The claimants have stated in the claim petition that the driver of the first respondent has driven the tractor in a rash and negligent manner and dashed against the cycle run by the deceased, which was going in front of the tractor. The 3rd appellant has been examined himself as P.W.1 and he has stated that the accident has occurred due to the rash and negligent driving of the driver of the first respondent. In Ex.P.1, First Information Report, it has been stated that the accident has occurred due to the rash and negligent driving of the driver of the first respondent. The driver of the first respondent has not been examined in order to prove that the accident has not been occurred as per the statement of the claimants and no acceptable evidence is also produced on the side of the respondents to buttress the contention made on the side of the claimants. Considering the evidence given by P.W.1 and also Ex.P.3, FIR, the entire responsibility can be fixed on the driver of the first respondent. The vehicle of the first respondent has been insured with the second respondent / Insurance Company and the policy was in force at the time of accident. Thus, the second respondent / Insurance Company



is liable to pay compensation.

6.As directed by this Court, Mr.A.K.Baskarapandian, learned Special Government Pleader, has produced the original copy of Accident Register of the deceased Karuppaiah, issued by the Government Hospital, Virudhunagar and this Court has perused the same. Though the deceased ran away from the hospital during treatment and died after 68 days from the the date of accident, the nature of the injuries sustained by the deceased would show that he would have died only due to the said injuries sustained by him at the time of accident. As far as the motor accidents claims cases are concerned, legislation is a welfare legislation and the Court has to consider as per the preponderance of probability, whether the death has occurred due to the accident? A careful scrutiny of the Accident Register would show that the deceased sustained grievous injuries due to accident. Hence, this Court holds that the death has occurred only due to the accident.

7.As far as the quantum is concerned, the accident is of the year 2006. Though in the claim petition, it is stated that the deceased was aged about 52 years at the time of accident, in the Accident Register, it is stated that the deceased was aged about 65. Before the accident, the deceased was a coolie and earning a sum of Rs.3,000/- per month. It would be reasonable to fix the notional monthly income of the deceased at Rs.3,000/-. Considering the number of dependants, 1/4th has to be deducted towards personal expenses and the monthly loss of income comes to Rs.2,250/- [3,000 - 750 = 2,250] and accordingly, the annual loss of income comes to Rs.27,000/- [2,250 x 12 = 27,000]. If the annual loss of income multiplied with multiplier No.7, the loss of income comes to Rs.1,89,000/- [27,000 x 7 = 1,89,000]. Considering the nature of the injuries sustained by the deceased, a sum of Rs.10,000/- towards pain and sufferings and Rs.5,000/- towards transport expenses, can be awarded. Further, a sum of Rs.5,000/- can be awarded towards funeral expenses. Thus, the total compensation comes to Rs.2,09,000/-.

8.In view of the same, the dismissal order passed by the Tribunal is set aside. The appellants / claimants are entitled to get compensation to the tune of Rs.2,09,000/- with 7.5% interest per annum from the date of petition till the date of deposit, excluding the delay period of 1233 days in filing this appeal. The award amount shall be apportioned equally among the claimants. The second respondent / Insurance Company is directed to deposit the award amount, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw their respective shares with accrued interest and costs by filing an application before the Tribunal. The appellants / claimants are directed to pay the Court fee, if any to be payable, within a period of four weeks from the date of receipt of a copy of this judgment.



9. This Civil Miscellaneous Appeal is, accordingly, partly allowed. No costs.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

To

The Subordinate Judge,
Motor Accident Claims Tribunal, Sivakasi.

Copy to:
The Record Keeper, (2 Copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.PETHU RAJESH, Advocate (SR-71627[F] dated 26/06/2019)

+1 CC to M/s.M.S.SURESH KUMAR, Advocate (SR-71457[F] dt.26/06/2019)

JUDGMENT MADE IN
C.M.A (MD) No.721 of 2014
26.06.2019

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JMN(22.08.2019) 4P : 6C