



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.09.2020

PRONOUNCED ON : 13.10.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1482 of 2007

and

M.P.No.1 of 2007

(Through Video Conferencing)

M/s.The Oriental Insurance Co., Ltd.,
59, Raja Street, Gobichettipalayam,
Erode District.

.. Appellant/3rd Respondent

vs.

Mathappan (died)

1.Lakshmiyayee (died)

2.Mohana @ Mohanambal

3.Minor.Vijayalakshmi

4.Minor.Periyasamy

5.Minor.Vijaya Prabhu(died) ... Respondents 1 to 5/Petitioners

6.P.Abimannan

7.S.Narayanan .. Respondents 6 & 7/Respondents 1 & 2

R1 & R5-died

R2 to R4 are the LR's of the detected R1 & R5 a memo dated 21.09.2020 made in SR No.34077/20 has been filed to that appeal has the same be recorded as per order dated.22.09.2020 in CMA 1482/07.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree made in M.C.O.P.No.82 of 2003, dated 31.12.2003, on the file of the Motor Accidents Claims Tribunal (Additional District Court) Fast Track Court No.IV, Erode at Bhavani.

For Appellant : Mr. S.Arunkumar

For Respondents 2 to 4 : Mr.E.Duraivaiyapuri for
Mr.N.Manokaran

For R6 & R7 : No Appearance



JUDGMENT

The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 31.12.2003 passed by the Motor Accidents Claims Tribunal, Additional District Judge (Fast Track Court-IV) Erode at Bhavani in M.C.O.P.No.82 of 2003.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.4,08,500/- as compensation to the respondent/claimant together with interest at 9% per annum from the date of filing of the claim petition, till the date of deposit. The compensation awarded by the Tribunal is as follows:

Sl.No.	Heads	Amount awarded by the Tribunal
1	Loss of dependency	Rs.3,84,000/-
2	Medical expenses	Rs. 15,000/-
3	Expenses	Rs. 2,000/-
4	Loss of estate	Rs. 2,500/-
5	Loss of consortium	Rs. 5,000/-
		Rs.4,08,500/-

3. During the pendency of the case before the Tribunal, the claimant died. Assailing the impugned Judgment and Decree, the learned counsel for the appellant-Insurance Company submits that the Tribunal erred in awarding the aforesaid compensation of Rs.4,08,500/- without an iota of evidence to substantiate that the injury eventually led to the death of the deceased. It was further submitted that the claimant also did not substantiate the injury suffered by him.

4. Learned counsel for the Appellant -Insurance Company submitted that the latin maxim *Actio Personalis moritur-cum-personna*" (a personal action dies with the parties to the cause of action) will apply to the facts of the case since the claimant died after filing claim petition. The learned counsel for the appellant relied on the following decision of this Court reported in *The Branch Manager, M/s.Oriental Insurance Co. Ltd., Vellore Vs Monohar (Deceased) & others*, CDJ 2017 MHC 2926.

5. He further submits that the death of the claimant, all his rights also got extinguished and therefore the Tribunal ought to have dismissed the claim petition as abated.

6. The learned counsel for the appellant-Insurance Company further submits that Ex.A4-Report of Motor Vehicles Inspector and the Accident Register-Ex.A5 did not give any details of



injury suffered by the deceased claimant. He further submits that if the deceased/claimant had indeed undergone treatment for the alleged injuries suffered by him, he should have filed those records to substantiate the same.

WEB COPY

7. He further submitted that the Tribunal erred in concluding that there was a disability leading to death for the Tribunal to award the impugned compensation as if there was a death due to the accident. He therefore submits that the impugned Judgment and Decree was liable to be set aside. It is further submitted that the testimony of P.W.2-Doctor cannot be relied upon as there was no other document to substantiate the injury suffered and the alleged disability of the deceased claimant.

8. Per contra, the learned counsel appearing for the respondents 1 to 5 who are the legal representatives of the deceased claimant submits that the impugned order passed by the Tribunal was well-reasoned and requires no interference.

9. I have heard the arguments advanced on behalf of the learned counsel for the appellant-Insurance Company and the respondents 1 to 5. I have also perused the evidence on record and the impugned judgment and decree passed by the Tribunal.

10. The case of the claimant Mathappan (since deceased) before the Tribunal was that on 01.05.2000 at about 3.30 a.m, he was riding a bicycle along with one Chenniyappan on the pillion, when the insured vehicle (Eicher Lorry) bearing Registration No.TN-49-Y-8377 hit them and in the process, he fell down sustained injuries all over his body and head.

11. As per the claim statement, due to the accident, the claimant suffered grievous injuries on the back side of the head, right side of the body (right leg, right hand) while the said Chenniyappan escaped unhurt. The injury claimant was brought to the hospital by his wife viz., 1st respondent.

12. The claimant Mathappan (since deceased) was said to have been taken to the Government Hospital, Bhavani, from where he was examined by P.W.2 and thereafter referred to Government Head Quarters Hospital, Erode due to the nature of injuries and kept under the medical care these for two days and thereafter referred to Government Medical College Hospital, Coimbatore for further treatment. The claimant was thereafter, discharged from the Government Medical College Hospital, Coimbatore after a period of 25 days.

13. It was the case of the claimant that even though he was discharged from the Government Medical College Hospital,



Coimbatore, he did not fully recover from the injuries and was unable to use his left hand and left leg and that he would continuously shiver and used to get intermittent fit, as a result of which, he was forced to take further treatment from private doctors as well and could not work any longer. Under these circumstances, considering the age of the claimant filed a claim petition for a sum of Rs.6,09,000/- before the Tribunal after a lapse of almost 14 months on 16.07.2001.

14. The claimant died on 16.06.2003 during the pendency of the proceedings before the Tribunal after deposing evidence on 23.04.2003. The claimant was a daily vegetable vendor and was aged about 36 years at the time of accident.

15. Before the Claims Tribunal, the claimant originally filed only two documents namely Xerox Copy of FIR and Insurance Policy along with the claim petition. Later, about seven exhibits were marked to substantiate the case of the claimant. However, no direct records were produced to substantiate that the deceased claimant was admitted in the other hospitals and took treatment over a period of 25 days or that he suffered with any of the symptoms due to the accident which took place on 01.05.2000. The appellant-Insurance Company therefore denied its liability and attempted to distance itself from the liability as an insurer of the insured lorry.

16. Since during the pendency of the claim petition before the Tribunal, the claimant died on 16.06.2003, 1st to 5th respondents herein who are the mother, wife and the three minor children of the deceased were impleaded.

17. Facts are not in as far as the involvement of the insured vehicle in the accident on 01.05.2020. It stands confirmed, in view of the exhibits viz., Ex.A.1- F.I.R, Ex.A.2 - Rough Sketch, Ex.A3- Observation Mahazar, Ex.A4 - Motor Vehicles Inspector Report, Ex.A5- Accident Register, Ex.A6 - Charge Sheet, Ex.A7 - Copy of Judgment .

18. The claimant was travelling in a bicycle at about 3.30 a.m. in the early morning on 01.05.2000 at Anthiyur Piruvoo, Bhavani (Daily Market Division).

19. At the time of the accident, the deceased was only 36 years and was riding his bicycle along with one Chenniyappan as a pillion rider. This indicate that the claimant (since deceased) was indeed a vegetable and was endowed with reasonably good health before the accident.

20. He sustained injury on the back side of the head on the right hand side of the body and on right leg and hand as per



Ex.A3 - Observation Mahazar by P.W.2. The testimony of the deceased claimant as PW1 also indicates that the injuries lead to shivering and that he was prone to get fits frequently which debilitated him and compromised the quality of life. However, no direct evidence were filed to substantiate the nature of injury and its impact or the earning capacity of the claimant. The Tribunal has believed the testimony of P.W.2. The deceased also died after depositing his evidence before the Tribunal.

21. Therefore, the only point for consideration is whether the testimony of P.W.2, (Dr.R.Neyanasekaran) which supports the case that the claimant (since deceased) suffered from disability viz. fits and seizure due to the accident that took place on 01.05.2000 as was claimed by the deceased claimant in his claim petition and accepted by the Tribunal for awarding the above compensation can be accepted or rejected and whether the compensation awarded to the respondent is to be sustained or not?

22. It is noticed that during the course of recording evidence, the deceased claimant himself deposited evidence as P.W.1 and marked Exhibits A1 to A7 on 23.04.2003. After depositing evidence on 23.04.2003, the claimant died on 16.06.2003.

23. Dr.R.Neyanasekaran was examined on 24.11.2003 as PW2. He gave initial treatment to the claimant. PW2 has deposited that after the deceased met with an accident on 01.05.2000, he was brought to the Government Hospital, Bhavani where PW2 was working as a Medical Officer at that point of time. At the time of depositing evidence, P.W.2 was working as a Special Medical Officer at Chennimalai.

24. PW2 has stated that the claimant was given first-aid/treatment and was referred to the Government Hospital at Erode for further treatment considering the nature of injuries suffered by the deceased claimant. He also confirmed that he had recorded his opinion in Ex.A.5 - Accident Register on 01.05.2000. It also bears his signature. In Ex.A.5, he has opined as follows:-

- i. A swelling on the middle of the head 3 x 2 cm;
- ii. An abrasion on the middle of the right hand 2 x ½ cm;
- iii. Fracture on the right side of the head;
- iv. Blood clotted on the forehead, due to the injuries sustained in the head, his brain;
- v. got affected skull broken
- vi. abrasion on his leg and hand.



25. These injuries in Ex.A.5 indicates serious injuries suffered by the deceased claimant. PW2 in his deposition also submitted that the deceased claimant had injuries on the right side of his body including swelling in his head and a crack on the skull. He has also deposed that the deceased claimant was thereafter referred to the Government Hospital, Erode and thereafter to Coimbatore.

26. PW2 has categorically stated that the nature of injuries suffered by the deceased made him vulnerable to giddiness and prone to fits and if the deceased vomited, it could also lead to infection of the lungs and eventual fatality. PW2 has further submitted that due to the head injuries, claimant's brain was affected and movement of both the hands and legs had been compromised and had become partially dysfunctional/ and stiff.

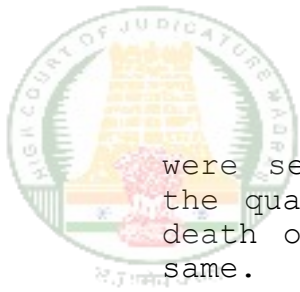
27. The deposition of the claimant as PW1 on 23.04.2003 and the deposition of PW2 on 24.11.2003 given after the death of the deceased claimant is consistent with each other. The Tribunal could have referred the claimant to a Medical Board for getting clear facts. However it also appears that such a practice was not in vogue at that point of time. Unfortunately, the claimant also died on 16.06.2003 after deposing evidence on 23.04.2003.

28. There is also no post-mortem report for the cause of the death. It appears that the death of the claimant would have been treated as death due to natural cause.

29. In my view, the fact that the claimant died three years after the accident without fully recovering from the injury and had filed a claim petition on 16.07.2001 stating that the head injury had debilitated him cannot be ignored. After all the Tribunals and the Courts are bound to award just compensation and are guided by preponderance of probabilities and not by strict rules of evidence.

30. The fact that Ex.A.1-FIR also came to be registered against the driver of the insured lorry and charge sheeted vide Ex.A6 indicates that the injuries were suffered by the claimant though not fatal but did certainly compromise the quality of life of the claimant and later consumed him. Though there is some element of doubt regarding the impact of the injury and the extent of disability suffered by the deceased claimant due to the accident on 01.05.2000 in absence of any disability certificate to substantiate the extent of injury, I am of the view, Ex.A.5 and the deposition of PW 1 (claimant) and deposition of PW2 cannot be brushed aside.

31. They indicate that the deceased claimant had indeed suffered head injuries including fracture of the skull which



were serious in nature. These injuries would have compromised the quality of life of the claimant and eventually lead to his death on 16.06.2003. There is no contra evidence to ignore the same.

WEB COPY

32. The head injury had permanently debilitated the claimant and had made him incapable of making out a living. The learned presiding officer of the Tribunal also had the benefit of seeing the claimant (P.W.1) in person when he deposed evidence on 23.04.2011.

33. The submission of the learned counsel for the appellant that the case has to be viewed from the prism of the Latin Maxim "actio personalis moritur cum persona" implying a personal action dies with the parties to the cause of action cannot be applied as this is a case of death of the claimant due to the injuries even though the death was delayed.

34. Even otherwise, as per the decision of the Hon'ble Supreme Court in Gujarat State Road Transport Corpn. vs. Ramanbhai Prabhatbhai, (1987) 3 SCC 234, Latin Maxim is not applicable in the context of the motor accident in view of statutory rights under the Motor Vehicles Act, 1939. This Act came to be substituted under the Motor Vehicles Act, 1989. In paragraph Nos. 13 & 15, the Court observed as under:-

13. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhai Khimji Virav. Chaturbhai Taljabhai [AIR 1977 Guj 195 : 1977 ACJ 253 : 1977 TAC 366] and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased.

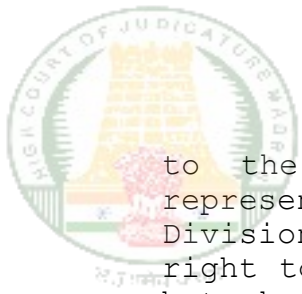


WEB COPY

15. Before concluding we may add that although the Act was extensively modified after the receipt of the report of the Law Commission, Parliament did not choose to amend Section 110-A of the Act by defining the expression "legal representatives" in relation to claims under Chapter VIII of the Act as "the spouse, parent and children of the deceased" as recommended by the Law Commission. The Law Commission had observed in its 85th Report that it would be appropriate to assign to the expression "legal representative" the same meaning as had been given to the expression "representative" for the purposes of the Fatal Accidents Act, 1855 and that would effectively carry out the purpose of social justice underlying Chapter VIII of the Act, to which the Fatal Accidents Act, 1855 was the nearest approximation. This recommendation was made after referring to the divergent views expressed by the various High Courts on the meaning of the expression "legal representatives" in Section 110-A of the Act. The fact that Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression "legal representative" in Section 110-A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased.

35. In the case of Umedchand Vs. Dayaram, (2002) 1 ACJ 966, the Court held that it may be true that his maxim has been criticized being unjust, obscure in its origin, inaccurate in its expression and often resulting in grave injustice and also in the country of its origin suggesting application of principle of justice, equity and good conscience unless it is specifically engrafted in the statute but it is undeniable that it has taken roots in this country and section 306 of the Indian Succession Act, 1925, has confined to its application to specific conditions. However, proper balance has to be worked out so that tortfeasors does not thrive at the cost of victim of accident or his legal representatives. Consequently, endeavour should be to minimise the application of this maxim as far as possible and advance the cause of justice."

36. The Court further held that so far as the claim for personal injury is concerned, it would abate on the death of the original claimant, but not the claim which pertains to the loss



to the estate of the injured. It survives to the legal representatives. In *Jothi Ram Vs. Chamanlal*, 1984 ACJ 645, the Division Bench of Punjab and Haryana High Court held that that right to sue survives the claim on account of loss to the estate but abated with respect to the personal injuries suffered by the claimant.

37. In *Girijanandini Devi vs Bijendra Narain Choundhary* AIR 1967 SC 1124, the Honourable Supreme Court while considering the question whether the decree for account can be passed against the estates, also considered the maxim "*actiopersonalismoritur cum persona*" and observed that the postulation that personal action dies with the person, has a limited application. It operates in a limited class of actions, such as actions for damages, assault or other personal injuries not causing the death of the party and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. Death of the person liable to render the account for property received by him does not therefore affect the liability of his estate. The Court thus observed as under:

"(14) Finally, it was urged that since defendants Mode Narain and Rajballav Narain had died during the pendency of the proceedings, the High Court was incompetent to pass a decree for account against their estates. Rajballav who was defendant No.6 died during the pendency of the suit for the Trial Court and Mode Narain who was defendant No.1 in the suit died during the pendency of the appeal in the High Court. But a claim for rendition of account is not a personal claim. It is not extinguished because the party who claims an account, the party who is called upon to account dies. The maxim "*action personalismoritur cum persona*" a personal action dies with the person, has a limited application. It operates in a limited class of actions *ex delicto* such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages *ex delicto*, and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death, or granting it would be nugatory. Death of the person liable to render an account for property



WEB COPY

received by him does not therefore affect the liability of his estate. It may be noticed that this question was not raised in the Trial Court and in the High Court. It was merely contended that because the plaintiff BijendraNarain was receiving income of the lands of his share no decree for accounts could be made. The High Court rejected the contention that no account would be directed in favour of the plaintiff on that account. They pointed out that the mere fact that the plaintiff was in possession of some portion of properties of the joint family since 1941 cannot possibly absolve the defendants, who were in charge of their dealings with the management of the properties, from rendering accounts of the joint family estate. The plaintiff was since September 1941 severed from the joint family in estate and also in mess and residence, and he was entitled to claim an account from the defendants from September 1941, but not for past dealings. The fact that the plaintiff is in possession of some of the properties will, of course, have to be taken into account in finally adjusting the account."

38. In PrabhakaraAdigavs Gowri And Ors (2017) 4 SCC 97, the Honourable Supreme Court in paragraph 25 held as under:-

25. It is apparent from Section 50 CPC that when a judgment-debtor dies before the decree has been satisfied, it can be executed against legal representatives. Section 50 is not confined to a particular kind of decree. Decree for injunction can also be executed against legal representatives of the deceased judgment-debtor. The maxim "actiopersonalismoritur cum persona" is limited to certain class of cases as indicated by this Court in Girijanandini Devi v. BijendraNarain Choudhary(supra) and when the right litigated upon is heritable, the decree would not normally abate and can be enforced by LRs. of decree-holder and against the judgment-debtor or his legal representatives. It would be against the public policy to ask the decree-holder to litigate once over again against the legal representatives of the judgment-debtor when the cause and injunction survives.



39. In my view that the deceased claimant had made out a case before the Tribunal. Therefore, I am of the view that the deceased claimant was entitled to get compensation under Section 166 read with 168 of the Act. The Tribunal was therefore justified in awarding compensation for death.

40. If compensation was awarded for injuries suffered by the Disability Certificate by applying multiplier, future prospect and under other conventional heads as per the decisions of the Hon'ble Supreme Courts, the respondents (claimants) would have been entitled to a much higher compensation.

41. The Tribunal on the other hand has awarded a sum of Rs.4,08,500/- as compensation for the death of the disability certificate in the impugned Judgment and decree has not given proper calculation. If the decisions of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680 and in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12 are applied to the fact of this case, the compensation to be awarded to the claimant would require.

42. I am satisfied that the Tribunal was justified in converting the claim petition by treating it as a claim petition filed for the death for awarding compensation. Though there are few errors committed by the Tribunal while arriving the aforesaid compensation, yet over all facts indicate that the Tribunal has awarded a just compensation. However, it is noticed that the Tribunal has awarded interest at 9% per annum. It appears to be on the higher side. Therefore, the interest awarded by the Tribunal at 9% per annum is reduced to 7.5% p.a. Barring the above reduction of interest, I do not find any reasons to interfere with the impugned judgment and decree of the Tribunal.

43. Therefore, the appellant Insurance Company is directed to deposit the amount awarded as compensation by the Tribunal together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit and cost thereon, within a period of six weeks from the date of receipt of a copy of this Judgment, less any amount it may have already deposited.

44. It is represented by the learned counsel for the respondents that 1st and 5th respondents died during the pendency



of this Civil Miscellaneous Appeal and therefore, filed a memo dated 22.09.2020 to that effect. It is stated that the legal representatives of the deceased 1st and 5th respondents are the respondents 2 to 4 in this appeal. Same stands recorded.

WEB COPY

45. Though the Tribunal has awarded a compensation of Rs.4,08,500/-, while apportioning the same to the claimants, it has wrongly deducted a sum of Rs.5,000/- from the total amount of compensation. The Tribunal has apportioned the amount as follows:-

1 st respondent (mother)	Rs.28,500/-
2 nd respondent (wife)	Rs.1,50,000/-
3 rd respondent (daughter)	Rs.75,000/-
4 th respondent (son)	Rs.75,000/-
5 th respondent (son)	Rs.75,000/-
Total	*Rs.4,03,500/-

- Instead of Rs.4,08,500/-

46. Since there is a mistake in the calculation, and the amount has to be apportioned between the surviving respondents along with the shares of the 1st and 5th respondents. Thus, the total amount is Rs.1,08,500/- (28,500 + 75,000 + 5,000) is directed to apportioned between R2 to R4 surviving respondents/claimants.

47. Therefore, the 2nd to 4th respondents are entitled to receive their respective shares together with interest accrued thereon as was awarded by the Tribunal. The balance amount of Rs.1,08,500/- (i.e. shares of the deceased 1st and deceased 5th respondents and balance amount of Rs.5000/- which was left out while apportioning) is to be apportioned equally between the 2nd to 4th respondents, less any amount that may be already withdrawn by the 1st and 5th respondents during their life time.

48. The 2nd respondent is permitted to withdraw her respective share together with interest. The 3rd and 4th respondents were aged about 10 and 6 years respectively at the time of filing of the claim petition in the year 2003 and would have attained the age of majority as on date. Therefore, the 3rd and 4th respondents are permitted to file appropriate applications before the Tribunal for recording the age of majority to withdraw their respective shares together with interest.



49. This Civil Miscellaneous Appeal is partly allowed to the extent of interest. No cost. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kkd

To:

1. The Additional District Court
Motor Accidents Claims Tribunal
Fast Track Court No.IV, Erode,
Bhavani.

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

+1CC to Mr.N.Manokaran, Advocate, Sr.No.34077

C.M.A.No.1482 of 2007

and

M.P.No.1 of 2007

GP (CO)
K.RK. (20.09.2021)