

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1626 of 2005

United India Insurance Co. Ltd.,
Coimbatore.

... Appellant

Vs.

Mohan (a) Mohankumar (Expired)

1.Nanjappa Gounder (Deceased)

2.Rajamanickam

3.M.Velusamy

4.R.Appusamy

5.N.Saravana Kumar @ Saravanan

6.Akilanteshwari

... Respondents

(RR5 & 6 are brought on record as
legal heirs of the deceased 1st respondent
vide order of this Court dt.18.10.2005
made in C.M.P.No.16184/2005)

Civil Miscellaneous Appeal is filed under Section 173 of
the Motor Vehicles Act 1988, against the Judgment and Decree
dated 11.08.2004 made in M.C.O.P.No.891 of 2001 on the file of
the Motor Accidents Claims Tribunal, Additional Subordinate
Judge, Coimbatore.

For Appellant : Mr.S.Arunkumar

R1 : Died

For RR2, 5 & 6 : Mr.E.D.Sethupathi

For RR3 & 4 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against
the Judgment and Decree dated 11.08.2004 made in
M.C.O.P.No.891 of 2001 on the file of the Motor Accidents
Claims Tribunal, Additional Subordinate Judge, Coimbatore.

2. The appellant is the third respondent in
M.C.O.P.No.891 of 2001 on the file of Motor Accident Claims
Tribunal, Additional Subordinate Judge, Coimbatore. The
respondents 1 and 2 herein have filed the above said claim
petition, claiming a sum of Rs.7,50,000/- as compensation for
the death of their son Mohankumar, who died in a road accident

that took place on 23.07.2001.

3. The case of the prosecution is that on 23.07.2001 at about 3.00 P.M., the deceased was driving his motor cycle (TVS 50) bearing Registration No.TN 37 S 8305 from east to west proceeding towards Erruttupallam from Perur along with one Arumugam, who was travelling as a pillion rider in the above said TVS 50. When they arrived near Uripallam Pudur Bridge, Kovai Siruvani Main Road, Coimbatore, a Jeep bearing Registration No.TN 38 C 7274, came at a high speed driven by the first respondent in a rash and negligent manner and dashed against the TVS 50. As a result of which, the petitioner and one Arumugam were thrown out of the TVS 50 and fell on the road. The deceased was taken immediately to Ganga Hospital, Coimbatore and taken treatment from 23.07.2001 as inpatient. Due to the said accident, the deceased sustained grievous injuries such as fracture in the front side of the skull and then it was operated. 1/3rd of the muscle has been removed from the left shoulder. Fractures in the jaw and both teeth in upper lateral incisors and lower lateral incisors were fallen. Right from the waist up to the knee the muscles were punctured and abrasions and lacerations throughout the body. In spite of treatment the deceased died on 12.08.2003 during the pendency of the trial. Prior to the accident, the deceased was hale and healthy and aged about 28 years. He was working as an Agricultural cooly and he was earning Rs.60/- per day. He is the only earning member of his family.

4. Denying the allegations, the appellant/Insurance company has filed a counter affidavit stating that the accident occurred only due to the negligent act of the deceased. Moreover, the income, occupation and medical expenses of the deceased are denied and the amount of compensation claimed is highly excessive.

5. During the trial before the Tribunal, on the side of the petitioners, P.W.1 to P.W.4 were examined and marked certain documents as Exs.P1 to P22. Neither oral evidence let in nor documents marked on the side of the respondents.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to the negligent driving of the third respondent herein and directed the third and fourth respondents and the appellant/Insurance company, to pay a sum of Rs.5,06,580/- as compensation to the petitioners/respondents 1 and 2 herein. Challenging the said award dated 11.08.2004 made in M.C.O.P.No.891 of 2001, the appellant/Insurance company has come out with the present appeal.

7. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred

in awarding a sum of Rs.5,06,580 in spite of the fact that the respondents 1 and 2 cannot maintain the claim petition. The Tribunal failed to note that in view of the maxim 'Actio Personalis Moriturcum Persona', the cause of action also ceases. The Tribunal also failed to note that the alleged injuries sustained on 23.07.01 cannot be attributed as reason for death occurred on 12.08.2003. The Tribunal failed to note that the respondents 1 and 2 herein have either filed post-mortem report or examined the doctor, who treated for the said injuries from 23.07.2001 to 12.08.2003 continuously. The Tribunal failed to appreciate the fact that when the death was not occurred due to the alleged injuries, the question of awarding a sum of Rs.2,16,000/- towards loss of dependency and Rs.10,000/- towards extra nourishment. He further submitted that after discharged from the hospital, the deceased/claimant died and hence, the injury sustained has to be taken into account for awarding compensation and the award passed by the Tribunal is excessive and prayed for dismissal of the claim petition.

8. The learned counsel for the respondents/claimants submitted that P.W.1 appeared before the Court below and had already submitted that he sustained injury on 23.07.2001, when he was travelling in TVS 50 bearing Registration No.TN 37 S 8305 along with the deceased Mohan Kumar as pillion rider. They were travelling from east to west proceeding towards Erruttupallam from Perur. When they arrived near Uripallam Pudur Bridge, Kovai Siruvani Main Road, Coimbatore, a Jeep bearing Registration No.TN 38 C 7274, came at a high speed driven by the first respondent in a rash and negligent manner and dashed against the TVS 50. Due to the accident, he sustained injury in left leg and hip region and private parts were injured. He was admitted to Government Hospital, where he has taken treatment for one day. Then he shifted to Ramakrishna Hospital, Coimbatore and had taken treatment for 101 days as in patient and various surgeries has been done. He has also undergone dialysis due to that accident.

9. Heard Mr.S.Arunkumar, learned counsel appearing for the appellant/Insurance Company and Mr.E.D.Sethupathi, learned counsel appearing for the respondent Nos.2, 5 & 6.

10. Perused the materials available on record. In P.W.1 cross examination, he has clearly stated that the accident occurred due to the negligent driving of the first respondent. P.W.2 is the father of the deceased and he deposed that due to the said accident his son, namely, the deceased underwent treatment for long time and for the medical expenses Rs.5,00,000/- has been spent by them. It is an admitted fact that there was no post-mortem conducted and deceased died due to the injury sustained by him. P.W.4-Doctor from Ganga Hospital deposed that on 23.07.2001, the deceased brought to

the hospital and he has injuries in head, left and right legs and in the left ear there was a bleeding and private parts were damaged. On going through the CT scan there was hemorrhage in brain and on 24.07.2001 the blood clots have been removed by surgery. On 02.08.2001 in the left thigh and left leg screws and plates have been fixed and micro surgery has been done. Thereafter various surgeries have been done on various dates. The deceased has given suggestion that since there was a hemorrhage in the brain, it can have a recurrence within five years and his entire prostate glands have been damaged. He also submitted that the deceased sustained disability in having any cohabitation with the wife.

11. From the above, it is clear that the deceased died due to the injuries sustained in the accident. Prior to the accident, the deceased was hale and healthy and he is 28 years old young man and apart from the fact had he been alive, he would be working as agricultural coolie and take care of the family. The Tribunal has fixed the notional income of the deceased as Rs.1,500/- per month and after deducting 1/3rd of the same to his personal expenditure, the contribution to the family is taken as Rs.1000/- per month. Considering the age mentioned in the death certificate is 28, the apt multiplier taken for calculation is 18 and the loss of income is calculated as $18 \times 1000 \times 12 = 2,16,000/-$. This Court is not inclined to interfere with the same. Moreover, it is observed that the claimant had marked Ex.P15 to prove the expenses made for the treatment and only after considering the same, the Tribunal has awarded a sum of Rs.2,80,580/- towards Medical Expenses and the same is hereby confirmed. Consequently, the amount towards Extra Nourishment is reduced to Rs.5,000/-. Considering the nature of injuries and treatment taken by the deceased, the claimant is entitled for a sum of Rs.5,000/- towards attender charges and Rs.10,000/- towards pain and sufferings and Rs.10,000/- towards transport of hospital and the same are awarded accordingly.

12. In view of the above observations made by this Court, the compensation awarded by the Tribunal is modified as follows :

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	2,16,000/-	2,16,000/-	Confirmed
2.	Medical expenses	2,80,580/-	2,80,580/-	Confirmed
3.	Extra Nourishment	10,000/-	5,000/-	Reduced
4.	Attender charges	0	5,000/-	Awarded

5.	Transport Hospital	to	0	10,000/-	Awarded
6.	Pain sufferings	and	0	10,000/-	Awarded
	Total		Rs.5,06,580/-	Rs.5,26,580/-	

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,06,580/- is hereby enhanced to Rs.5,26,580/- together along with interest at the rate of 6% per annum from the date of petition till the date of deposit. The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The appellant/Insurance Company and the respondents 3 and 4 herein are 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 claimants are permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. The apportionment held by the Tribunal is confirmed. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

rsi

To

1.The Motor Accidents Claims Tribunal/
Additional Subordinate Judge,
Coimbatore.

Copy to:

The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate SR.8683
+1cc to Mr.E.D.Sethupathi, Advocate SR.8499

C.M.A.No.1626 of 2005

MP(CO)
CB(22/01/2021)