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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.10.2020
PRONOUNCED ON : 18.11.2020

CORAM
THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2707 of 2010
and
M.P.No.1 of 2010

(Through Video Conferencing)

National Insurance Company Ltd.,
Branch Officer,
Market Complex,
Salem -1 .

..Appellant

vs.

Jayaraj (deceased)
1.Santha

2.Mosas Solomen
(Impleaded as per in Cr.P.No.163/2004
dated 30.04.2008 passed by this Court
in I.A.No.865/2008 dated 18.11.2008)

3.A.Govindasamy

4.N.Subramaniam

5.N.Kumarasamy

6.M/s.United India Insurance Co., Ltd.,
Divisional Office 3, E.B.Buildings,
Door No.24, Mill Road,
Coimbatore - 1.

..Respondents

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.1092 of 1994 dated 18.01.2010, on the file of the Motor Accidents Claims Tribunal (1 Additional Sub Court) Coimbatore.

For Appellant :Mr.S.Arunkumar
For 1st and



2nd respondents :Mr.V.Sivakumar

J U D G M E N T

The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 18.01.2010 passed by the Motor Accidents Claims Tribunal and I Additional Sub Court, Coimbatore in M.C.O.P.No.1092 of 1994.

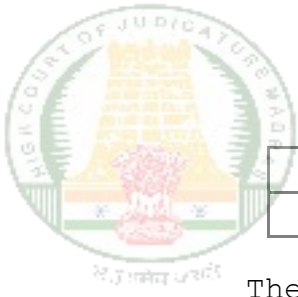
2. By the impugned Judgment and decree, the Tribunal has awarded a sum of Rs.1,29,500/- to the 1st and 2nd respondents/2nd and 3rd claimants who are the legal representatives of the 1st claimant who has since deceased during the pendency of the claim petition. The 1st and 2nd respondents are the wife and the son of the deceased 1st claimant.

3. The claim petition was originally filed on 03.10.1994 by the deceased 1st claimant for the injuries suffered by him in the accident involving the insured vehicle. As per the claim statement, the deceased 1st claimant suffered the following injuries:-

- i. Fracture on left hand
- ii. Lacerated injury on right eye
- iii. Other grievous and multiple injuries all over the body.

4. For the injuries suffered by the claimant, the said claim petition was filed seeking for compensation under the following heads:-

Heads		Amount
1	Loss of earning from 29.08.1994 to till date	Rs. 3,500
2	Partial loss of earning	Not applicable
3	Transport to hospital	Rs. 1,000
4	Extra Nourishment	Rs. 5,000
5	Damage to clothing and articles	Rs. 1,000
6	Expenditure of medical treatment	Rs. 50,000
7	Expenses for medicine and Treatment	Rs. 10,000
8	Damages to the Moped	Rs. 3,000
9	Compensation for pain and suffering	Rs. 15,000
10	Compensation for the loss of Earning power (Loss of Estate)	Rs.1,25,000



Heads		Amount
	Total	Rs.2,13,500

The claimant however restricted the claim to Rs.1,50,000/-.

5. During the pendency of the claim petition, the claimant passed away on 06.03.1998 due to heart attack. The amount awarded by the Tribunal to the first & second respondents/claimants representatives is mainly challenged on the ground that the Tribunal ought to have dismissed the application by applying the latin maxim "Actio. Moris-ActioPersonalismoritur-cum-personna" (a personal action dies with the parties to the cause of action). It is further submitted that the issue is now squarely covered by a plethora of decision of the Hon'ble Supreme Court, Madhya Pradesh High Court and that of this Court.

6. On behalf of the appellant, the learned counsel for the appellant submitted that during the course of trial, the respondents 1 and 2 marked as FIR - Ex.P.1, Ex.P.2 - Copy of Accident Register and Ex.P.3 - Medical Certificate and examined P.W.2 Dr.P.Lakshmanan.

7. It is submitted that the Tribunal after considering the evidence of P.W.2 has erroneously concluded that the injured was not in the position to do his avocation properly and proceeded to award compensation for the injuries sustained, presuming loss of earning power without a proper assessment of disability and awarded a sum of Rs.1,29,500/- for the injuries sustained by the claimant Jayraj (since deceased).

8. It is submitted that the Tribunal failed to note that the said certificate was issued on 21.03.1998 for the purpose of making an untenable claim by the respondents 1 & 2. It is further submitted that if the injured suffered infection for 2 to 2 ½ years after the accident, he would have definitely taken inpatient treatment and also would have produced prescriptions and bills towards purchase of medicines etc. Since P.W.2 stated that he was not aware of the treatment given under Accident Register, it is not possible for him to issue a certificate alleging RTA.

9. It is submitted that the Tribunal failed to note that during cross examination, the said Doctor/P.W.2 stated that "காயம் பட்ட நபர் நான் ஊட்டியில் இருக்கும் போது மேற்படி சான்றிதழை பெற்றார்", (the injured person got the certificate from me when I was in Ooty). According to the learned counsel for the appellant-Insurance Company, the evidence of P.W.2 and Disability Certificate were false.



10. It is further submitted that the Tribunal failed to note that the deceased person could not have come for treatment him on 21.03.1998 to get the said certificate. He therefore submitted that the Tribunal unmindful of the above contradictions has awarded compensation for injuries erroneously relying on the above said evidence.

11. The learned counsel for the appellants has relied on the following decisions :

- i. Girijanandini Devi & Others Versus BijendraNarain Choudhary, CDJ 1966 SC 311;
- ii. The Managing Director, Pandiyan Roadways Corporation, Madurai Versus S. Rajalakshmi & Others, CDJ 2000 MHC 793;
- iii. Sakunthala& Others Versus R. Gopal & Another, CDJ 2007 MHC 1161;
- iv. The Branch Manager, M/s. Oriental Insurance Co. Ltd., Vellore Versus Monohar (Deceased) & Others, CDJ 2017 MHC 2926;
- v. Bhagwati Bai Versus Bablu, CDJ 2006 MPHC 732;
- vi. National Insurance Co., Ltd., Trichy Versus Sivabakkiyam (Deceased) & Others, CDJ 2018 MHC 4793.

12. Defending the impugned Judgment and decree, the learned counsel for the first and second respondents submits that, this issue is no longer open for the appellant/Insurance Company to distance from its liability in the light of the fact that, after the death of the deceased/claimant though I.A.No.15 of 1999 filed before the Tribunal to implead the 1st and 2nd respondents was dismissed by the Tribunal applying the "latin maximum Actio. Moris-ActioPersonalismoritur-cum-personna".

13. It is submitted that the said order was set aside vide dated 30.04.2008 in C.R.P.No.163 of 2004. It is submitted that this Court restored the rights of the 1st and 2nd respondents to pursue with the claim petition filed by the deceased/claimant on 13.10.1994. He, therefore, submits that there is no merits in the present appeal.

14. It is further submitted that the claim petition is of the year 1994 and the Tribunal ought to have disposed of the application expeditiously. Instead, it took about 16 years to pass the final orders and therefore the learned counsel for R1 & R2 further submits that said "latin maximum Actio. Moris-ActioPersonalismoritur-cum-personna" cannot be applied to their prejudice. He submits that the amount of compensation to be awarded by the Tribunal would be the estate of the deceased.



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15. I have considered the arguments advanced on behalf of the appellant insurance company and the 1st and the 2nd respondent's who are the legal representatives of the deceased claimant.

16. Facts are not in dispute. The case of the deceased claimant was that on 29.8.1994 he was holding his moped and standing when the driver of the insured jeep drove it in a rash and negligent manner and hit a stationary autorickshaw insured with the Insurance company and as a result of the impact, he sustained injuries and fractured his left hand and suffered other injuries.

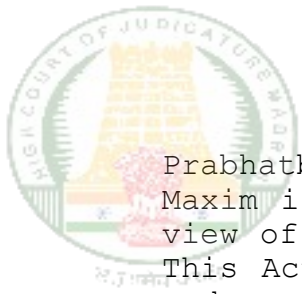
17. A claim petition was therefore filed on 3.10.1994 by the deceased claimant. During the pendency of the aforesaid proceeding, the claimant died on 6.3.1998. The medical certificate dated 21.3.1998 was marked as Ex.P.8. Therefore, the aforesaid medical certificate was posthumously issued by PW 2 certifying that the deceased had suffered several disability due to the accident. It is therefore submitted that the compensation was wrongly awarded.

18. The submission of the learned counsel for the appellant states that the case has to be viewed from the prism of the Latin Maxim "action personalis moritur cum persona" implying a personal action dies with the parties to the cause of action accepted.

19. Invocation of the Latin maxim to deny compensation to the legal representative of the deceased claimant namely the 1st and the 2nd respondent appears to be an unjust proposition considering the fact that the Tribunal took 16 years to dispose the case. If the claimant had not been incapacitated due to the injury, he would have contributed to the family and provided for their needs.

20. To apply the above maxim in the context motor accident would not only allow a wrong doer to go scot free but also prejudice the dependents of the deceased claimant. The dependents would have not only lost the sole breadwinner or the provider of their needs but also the comfort of the deceased claimant's preference had he been alive. Therefore, compensation on account of loss of earning due to injury suffered by the deceased has to be paid to the dependents even if the claimant pre-deceased pending disposal of the claim petition.

21. In fact, the Honourable Supreme Court has also questioned the applicability of the aforesaid maxim in the context of Motor Vehicles Act, 1939 in the Hon'ble Supreme Court in Gujarat State Road Transport Corpn. vs. Ramanbhai



Prabhatbhai, (1987) 3 SCC 234, the Court held that the latin Maxim is not applicable in the context of the motor accident in view of the statutory rights under the Motor Vehicles Act, 1939. This Act came to be substituted by the Motor Vehicles Act, 1989 under which the claim was filed. 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 Vira v. 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.

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



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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."

22. In the case of *Umedchand Vs. Dayaram*, (2002) 1 ACJ 966, the Madhya Pradesh High Court held that it may be true that "this 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 undeniable statute, but it is undeniable that it has taken roots in this country and Section 306 of the Indian Succession Act, 1925. However, proper balance has to be worked out so that tort feasons 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."

23. 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.

24. 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.

25. 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 "action personalis moritur 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:



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26. In Prabhakara Adiga vs Gowri And Ors. (2017) 4 SCC 97, the Honourable Supreme Court 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 "action personalismoritur 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."

27. Therefore, the delay in disposal of the claim petition cannot be to the disadvantage of the injured claimant or his dependents in case of untimely death of the claimant.

28. Since the deceased claimant was entitled to get compensation under Section 166 read with 168 of the Act during his life time, I am of the view that the extent of compensation which were to benefit the dependents of the deceased during his life time cannot be denied by pressing the aforesaid iniquitous latin maxim "action personalis moritur cum persona". The Tribunal was therefore justified in awarding compensation.

29. The compensation that would have been awarded by the Tribunal would be an estate of the deceased claimant during his life time and can be subject to succession on his death to his legal heirs and representatives.

30. However, whether the compensation awarded by the Tribunal was a just compensation or not is an altogether different issue. The injury may have compromised the quality of his life and may have also indirectly contributed to his early death considering the fact that the deceased was only aged 50 years at the time of accident. The claimant lived approximately for 43 months after the accident on 29.08.1994 till 06.03.1998. Since the family would have supported the claimant, I find sufficient reasons for awarding compensation towards loss of earning for the aforesaid period. Further, the courts are bound to award just compensation under the Act.



31. There is no proof to substantiate the income of the deceased claimant was Rs.3,500/- per month as a taxi driver. The Tribunal has applied the multiplier by considering the income of the deceased as Rs.3,000/- per month.

32. Therefore, Rs.1,29,500 awarded to the deceased claimant posthumously as compensation appears to be disproportionate for the injuries suffered by the deceased claimant on 29.08.1994. Therefore, I am inclined to modify the compensation awarded by the Tribunal. I am inclined to consider a notional income of the deceased claimant as Rs.2,250/- per month for computing the compensation. Only amounts towards pain and sufferings cannot be granted on account of the latin maxim "Actio. Moris-ActioPersonalismoritur-cum-personna" (as a personal action dies with the party to the cause of action). Therefore, the compensation awarded by the Tribunal is re-quantified as follows:-

Loss of Income for 43 months (Rs.2,250 x 43)	Rs.96,750/-
Damage to moped	Rs. 1,000/-
Medical expenses	Rs. 5,000/-
Total	Rs.1,02,750/-

33. The aforesaid amount is rounded off to Rs.1,03,000/-. The appellant - Insurance Company is therefore directed to deposit the same amount together with interest at 7.5% from the date of claim petition till the date of deposit and costs, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

34. On such deposit, the claimant-respondent Nos.1 & 2 are permitted to withdraw the award amount in the same proportion as was awarded by the Tribunal, together with interest and cost, less any amount already withdrawn, by filing suitable application before the Tribunal.

35. In the light of the above observation, the appeal filed by the appellant insurance company is partly allowed. No cost. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

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Sub-Assistant Registrar



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To:

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The Motor Accidents Claims Tribunal,
(1st Additional Sub Court) Coimbatore.

+1 CC to Mr.S.Arunkumar, Advocate sr 37094.

C.M.A.No.2707 of 2010
and M.P.No.1 of 2010

VSNII (CO)
SP(17/08/2021)