

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2290 of 2012  
and M.P.No.1 of 2012

National Insurance Co. Ltd.  
403/B-10, Karthikeya complex  
Mettur main road  
Bhavani.

....Appellant/2<sup>nd</sup> Respondent

Vs.

Mayakrishnan (deceased)

1.Dhanasingh

2.Vairam

....Respondents 1 & 2/Claimants

3.T.C.Nallasamy

.... 3<sup>rd</sup> Respondent/1<sup>st</sup> Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.03.2012 made in M.C.O.P.No.826 of 2002 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur.

For Appellant : Mr.S.Arunkumar

For R1 and R2 : Mr.M.Lokesh  
for Mr.MA.P.Thangavel

J U D G M E N T

The matter is heard through "Video-conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 07.03.2012 made in M.C.O.P.No.826 of 2002 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.826 of 2002 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur. One Mayakrishnan, son

of the respondents 1 and 2, filed the claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.03.2002.

3. According to the respondents 1 and 2, on the date of accident i.e., on 24.03.2002, at 13.30 hours, while their son Mayakrishnan was walking along Thekkalur Vellandipalayam pirivu, National Highways Road, near S.P. Textiles, from South to North direction on the left hand side of the road, the driver of the lorry belonging to the 3rd respondent, which came from West to East direction, drove the same in a rash and negligent manner, dashed on the said Mayakrishnan and caused the accident. Due to the accident, Mayakrishnan sustained grievous injuries all over the body. Therefore, the said Mayakrishnan has filed the above claim petition claiming compensation against the 3rd respondent and appellant. Pending claim petition, the said Mayakrishnan died on 17.12.2002 and hence, the parents of the deceased were impleaded as claimants.

4. The 3rd respondent, owner of the lorry remained exparte before the Tribunal.

5. The appellant/Insurance Company filed counter statement denying the averments made by the respondents 1 and 2 and stated that the accident has occurred only due to negligence act of the deceased. The driver of the lorry belonging to the 3rd respondent is not responsible for the accident. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 and 2. The appellant/Insurance Company has also denied the age, avocation, income, injuries and treatment taken by the deceased. In any event, the compensation claimed by the respondents 1 and 2 is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent, father of the deceased, examined himself as P.W.1, Dr.Senthilkumar was examined as P.W.2 and one Saravanan, co-worker of the deceased was examined as P.W.3 and marked five documents as Exs.P1 to P5. The appellant/Insurance Company examined one Karthick, Official of the appellant/Insurance Company as R.W.1 and did not let in any documentary evidence.

7. 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 lorry belonging to the 3rd respondent and directed the 3rd respondent as well as the appellant/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.3,93,600/- as compensation to the respondents 1 and 2.

8. Against the said award dated 07.03.2012 made in M.C.O.P.No.826 of 2002, the appellant/Insurance Company has come out with the present appeal challenging the quantum of compensation awarded by the Tribunal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the respondents 1 and 2 have failed to prove that the death of the deceased was due to the injuries sustained by him in the accident. The respondents 1 and 2 failed to produce the treatment records to prove that the deceased died on 17.12.2002 due to the injuries sustained by him in the accident. The Tribunal erred in relying on the evidence of P.W.2/Doctor, who has presumed the cause of death was due to the injuries by perusing Ex.P2/Discharge summary. If really the victim had suffered infection, the respondents 1 and 2 would have produced medical bills for the treatment taken by the victim. The cause of action for the claim was not proved by the respondents 1 and 2 and prayed for setting aside the award of the Tribunal.

10. Per contra, the learned counsel appearing for the respondents 1 and 2 contended that in the accident, the deceased suffered fracture and multiple injuries and underwent surgery. The deceased was discharged from the hospital on 07.05.2002. The injury suffered by the deceased was infected and due to the infection, he died. The deceased died only due to the injuries and infection suffered by him. The respondents 1 and 2 have proved the same by examining P.W.2/Doctor. The Tribunal considering the evidence of P.W.2/Doctor, has held that the deceased died due to the injuries sustained by him in the accident by giving valid reason and prayed for dismissal of the appeal.

11. On perusal of the records, it is seen that on 11.03.2020, the learned counsel appearing for the respondents 1 and 2 took time for furnishing the documents to show that the deceased had taken continuous treatment even after discharged from the hospital on 07.05.2002. At his request, the appeal was adjourned to 18.03.2020. Even today, when the matter is taken up for hearing, the learned counsel appearing for the respondents 1 and 2 did not produce any document to show that the continuous treatment was taken by the deceased after discharge from the hospital and to prove that the death was due to the injuries.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 and 2 and perused the entire materials available on record.

13. From the award of the Tribunal, it is seen that the Tribunal held that the deceased died due to the injuries based on the evidence of P.W.2/Doctor. P.W.2/Doctor is not the Doctor

who treated the deceased at any time. P.W.2/Doctor deposed based on Ex.P2/discharge summary produced by the respondents 1 and 2 after the death of the deceased. According to P.W.2/Doctor, the injury sustained by the deceased was infected, the infection did not respond to the medicines prescribed by the Doctor, infection would have spread to the whole body and resulted to death. The respondents 1 and 2 except producing Ex.P2/Discharge summary and Ex.P3/Medical bills have not produced any other medical records. The respondents 1 and 2 have also not produced any document to show that the deceased took treatment even after discharged from the hospital and wound suffered by him was infected. A verification of Ex.P2/Discharge summary shows that the wounds cleaned at the time of discharge and there is no mention about the infection. The deceased was advised to take tablets mentioned therein, to dress the wound once in five days and to come for review after two weeks. A reading of Ex.P2/discharge summary shows that P.W.2/Doctor has deposed without there being any medical records that the wound sustained by the deceased was infected and he did not respond to the medicines. In view of the above materials, the finding of the Tribunal that the deceased died due to the injuries suffered by him in the accident is not correct. Therefore, the amounts awarded by the Tribunal towards loss of dependency, loss of love and affection and funeral expenses are liable to be set aside and they are hereby set aside. The respondents 1 and 2 are entitled to only medical expenses and transportation. The respondents 1 and 2 have produced Ex.P3/Medical bills to show that they spent a sum of Rs.45,588/- towards medical expenses. Due to the injuries, the deceased would have spent some amount for medical expenses and treatment. Therefore, Rs.45,588/- and Rs.5,000/- awarded by the Tribunal towards medical expenses and transportation respectively are just and reasonable and hence, the same are hereby confirmed. Thus 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 or reduced |
|------|----------------------------|---------------------------------|-----------------------------------|---------------------------------------------------|
| 1    | Loss of dependency         | 2,88,000                        | -                                 | Set aside                                         |
| 2    | Loss of love and affection | 50,000                          | -                                 | Set aside                                         |

| S.No | Description      | Amount awarded by Tribunal (Rs)  | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted or reduced |
|------|------------------|----------------------------------|-----------------------------------|---------------------------------------------------|
| 3    | Funeral expenses | 5,000                            | -                                 | Set aside                                         |
| 4    | Medical expenses | 45,588                           | 45,588                            | Confirmed                                         |
| 5    | Transportation   | 5,000                            | 5,000                             | Confirmed                                         |
|      | Total            | 3,93,588 rounded off to 3,93,600 | 50,588 rounded off to 50,600      | Reduced by Rs.3,43,000/-                          |

14. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.3,93,600/- awarded by the Tribunal is hereby reduced to Rs.50,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent and the appellant/Insurance Company are jointly and severally 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 six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 and 2 are permitted to withdraw the modified award amount now determined by this Court equally among themselves along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The 3rd respondent and appellant/Insurance Company are permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.826 of 2002 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur, if the entire award amount has already been deposited by them respectively. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-  
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

kj

To

1.The Principal Subordinate Judge  
Motor Accident Claims Tribunal  
Tiruppur.

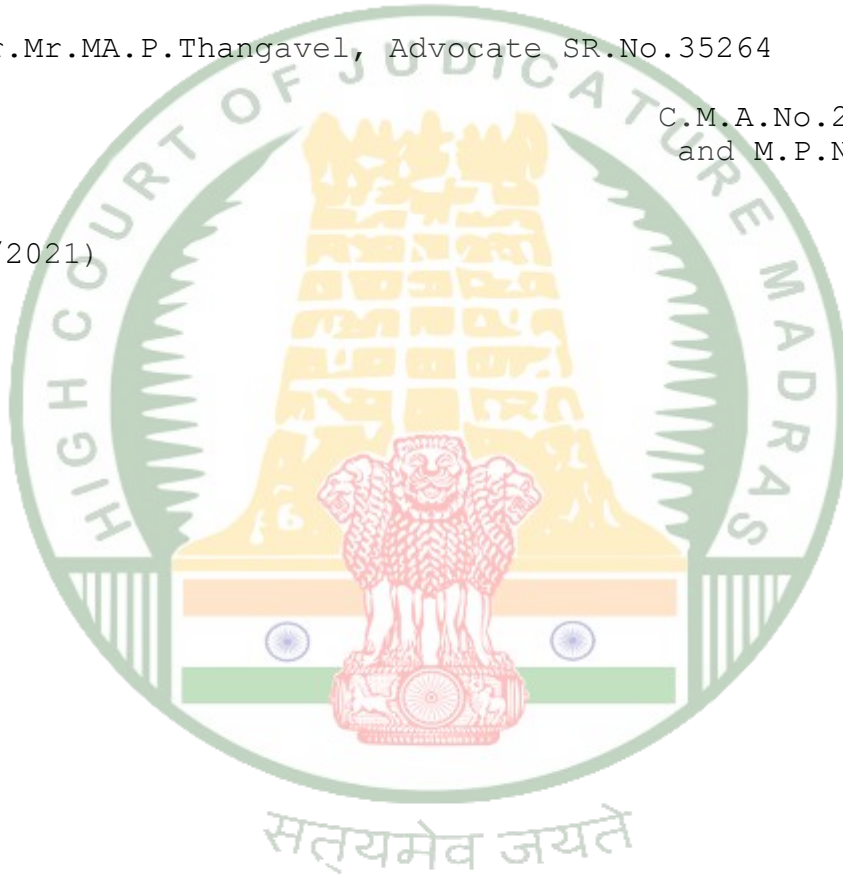
2.The Section Officer  
VR Section, High Court  
Chennai.

+1cc to Mr.S.Arunkumar, Advocate SR.No.35500

+1cc to Mr.Mr.MA.P.Thangavel, Advocate SR.No.35264

C.M.A.No.2290 of 2012  
and M.P.No.1 of 2012

SV (CO)  
GMY (13/05/2021)



WEB COPY