

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3059 of 2012

Eswaran (died)

1.Santhi

2.Minor.Vasanthamani

3.Minor.Loganathan

(Minor appellants 2 and 3 are represented
by their next friend and mother, Santhi)

4.Pachiyammal

5.Ammasai

.. Appellants/Claimants

(Appellants 2 to 6 are impleaded as per order
dated 22.11.2006 made in I.A.No.615 of 2006 and
amended as per order dated 05.01.2007 made in
I.A.No.689 of 2006)

Vs.

1.S.P.Chandrasekar

(R1 remained exparte before Tribunal.

Hence, notice to R1 dispensed with)

2.The National Insurance Company Limited,

No.58, Rajaji Street,

Kangayam - 638 701.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section
173 of the Motor Vehicles Act, 1988, against the Judgment and
Decree dated 19.06.2007 made in M.C.O.P.No.3 of 2006 on the file
of the Motor Accident Claims Tribunal, Additional District
Court, Fast Track Court No.II, Gobichettipalayam.

For Appellants : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

For R2 : Mr.D.Bhaskaran

J U D G M E N T

The matter is heard through "Video-Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 19.06.2007 made in M.C.O.P.No.3 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Gobichettipalayam.

3.Originally one Eswaran filed the claim petition against the respondents for the injuries sustained by him in the accident that took place on 10.05.2004. Pending claim petition, the said Eswaran died on 22.05.2006. Therefore, the legal heirs of the deceased Eswaran were impleaded as appellants 2 to 6 as per the order dated 22.11.2006 made in I.A.No.615 of 2006 and the value of claim was amended to Rs.5,00,000/- as per order dated 05.01.2007 made in I.A.No.689 of 2006.

4.According to the said Eswaran, on 10.05.2004 at about 21.30 hours, while he was riding his TVS 50 motorcycle bearing Registration No.TN 36 A 8196 on Kunnathur - Gobichettipalayam main road, near Kunnathur car parking, the driver of the van belonging to the 1st respondent who was driving the van from the opposite direction, came in a rash and negligent manner and dashed against the said Eswaran and caused the accident. In the accident, the said Eswaran sustained multiple grievous injuries all over his body. Therefore, he was admitted in the Government Hospital, Erode as in-patient. Thereafter, he was shifted to CMC Hospital, Coimbatore and thereafter taken treatment at Government Hospital, Gobichettipalayam and further he has taken treatment in a Private Hospital. In the mean time, the said Eswaran filed claim petition in M.C.O.P.No.3 of 2006 before the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Gobichettipalayam against the respondents, being the owner and insurer of the van respectively. In spite of treatment, the said Eswaran succumbed to injuries in the hospital on 22.05.2006. Therefore, the legal heirs of the deceased filed I.A.No.615 of 2006 to implead them as the legal heirs of the deceased and subsequently filed I.A.No.689 of 2006 to amend the value of claim.

5.The 1st respondent-owner of the van remained exparte before the Tribunal.

6.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellants. According to the 2nd respondent-Insurance Company, the accident has not occurred as alleged by the deceased. The deceased has to prove that the accident has occurred only due to rash and negligent driving by the driver of the van belonging to the 1st respondent. The deceased has to prove that the driver of the 1st

respondent's van was possessing valid driving license and the 1st respondent's van was having valid insurance policy, Registration Certificate and permit at the time of accident. The deceased has to prove his age, avocation, income, nature of injuries, disability and period of treatment taken by producing valid documents. In any event, the quantum of compensation claimed by the said Eswaran is highly excessive and prayed for dismissal of the claim petition as against the 2nd respondent-Insurance Company.

7. Before the Tribunal, the 2nd appellant examined herself as P.W.1 and one Saravanavel @ Saravanan, who is an eye-witness to the accident was examined as P.W.2 and 14 documents were marked as Exs.P1 to P14. The 2nd respondent-Insurance Company did not let in any oral and documentary evidence.

8. The Tribunal considering the pleadings, oral and documentary evidence dismissed the claim petition on the ground that the appellants 2 to 6 have not proved that the said Eswaran died only due to the injuries sustained by him in the accident and also there was no nexus between the injuries and death of the said Eswaran.

9. Against the said award dated 19.06.2007 made in M.C.O.P.No.3 of 2006 dismissing the claim petition, the appellants have come out with the present appeal.

10. The learned counsel appearing for the appellants contended that the Tribunal failed to see that when the deceased was riding his TVS 50 motorcycle, the driver of the van belonging to the 1st respondent drove the vehicle in a rash and negligent manner and caused the accident. The deceased has taken treatment as in-patient at Government Hospital, Erode and subsequently shifted to CMC Hospital, Coimbatore and again shifted to Government Hospital, Gobichettipalayam and has taken treatment as in-patient in a Private Hospital. The Tribunal erroneously dismissed the claim petition holding that the death was not due to the injuries sustained by the deceased in the accident. The deceased sustained injuries in the accident occurred on 10.05.2004. He filed claim petition on 17.12.2004 and died on 25.02.2006, due to the grievous injuries sustained by him in the accident. The appellant proved the same by examining P.W.1 to P.W.4 and medical records and examining P.W.2, who is a pillion rider at the time of accident. P.W.2/eye-witness deposed about the details of hospitals in which the deceased was treated. The Tribunal erroneously dismissed the claim petition when there was no contra evidence on behalf of the respondents. The 2nd respondent-Insurance Company in the counter statement has not stated that death was not due to the injuries sustained by the deceased in the

accident. The Tribunal failed to consider the evidence and erroneously dismissed the claim petition and prayed for setting aside the award and for granting compensation.

11. Per contra, Mr. D. Bhaskaran, learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellants have not proved the nexus between the injuries and death of the said Eswaran. The Tribunal considering the same, has not awarded any compensation and rightly dismissed the claim petition. The award passed by the Tribunal is proper and prayed for dismissal of the appeal.

12. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

13. The appellants are the legal heirs of one Eswaran. Originally the said Eswaran filed the claim petition for the injuries sustained by him in the accident that took place on 10.05.2004. Pending claim petition, the said Eswaran died on 22.05.2006 and appellants were brought on record as legal heirs of the said Eswaran. It is an admitted fact that the said Eswaran died after two years from the date of accident. When such is the case, the appellants ought to have let in evidence to show that the said Eswaran was taking continuous treatment even after being discharged on 10.06.2004 and died only due to the injuries sustained by him in the accident. P.W.4/Doctor, who treated the deceased in Government Hospital, Coimbatore had deposed that due to intensive treatment given to the said Eswaran, his condition improved and at the request of the said Eswaran, he was discharged from the Hospital. P.W.3/Doctor gave a certificate after death of the said Eswaran and deposed that he has not seen the Eswaran or appellants and also has not seen the original medical records of the said Eswaran. P.W.3/Doctor has deposed that he has issued the certificate only at the request of an advocate. The first appellant as P.W.1 admitted that she has not informed the death of the said Eswaran to the Police and no postmortem was conducted.

14. From the above materials, it is clear that appellants failed to prove that the said Eswaran died only due to the injuries sustained by him in the accident. The said Eswaran while he was alive, filed claim petition claiming compensation for the injuries sustained by him in the accident. Even after his death, the appellants can file a claim petition for claiming compensation for the medical expenses incurred. The appellants have not filed any materials to show the expenses incurred for the treatment of said Eswaran. From the materials available on record, it is seen that the said Eswaran has taken treatment in Government Hospital, Erode as in-patient.

Thereafter, he was shifted to CMC Hospital, Coimbatore, Gobichettipalayam Hospital and further he has taken treatment in a Private Hospital. Though the said Eswaran has taken treatment in Government Hospital, the appellants would have spent some amount towards medical expenses, transportation and other expenses. The accident occurred in the year 2004. The appellants are entitled to a sum of Rs.50,000/- towards medical expenses, attendant charges and other expenses. Thus, the compensation awarded by this Court as follows:

S. No	Description	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Medical expenses, attendant charges and other expenses	50,000/-	Granted
	Total	Rs.50,000/-	Granted Rs.50,000/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the appellants are entitled to a sum of Rs.50,000/- as compensation together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the amount now awarded by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.3 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.II, Gobichettipalayam. On such deposit, the appellants 1, 4 and 5 are permitted to withdraw a sum of Rs.10,000/- each as their respective share of the award amount now determined by this Court, along with proportionate interest and costs, by making necessary applications before the Tribunal. The share of the minor appellants 2 and 3 (i.e., Rs.10,000/- each) are directed to be deposited in any one of the Nationalized Banks, till the minor appellants 2 and 3 attains majority. On such deposit, the 1st appellant, being the mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 2 and 3. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

krk

To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.II,
Gobichettipalayam.

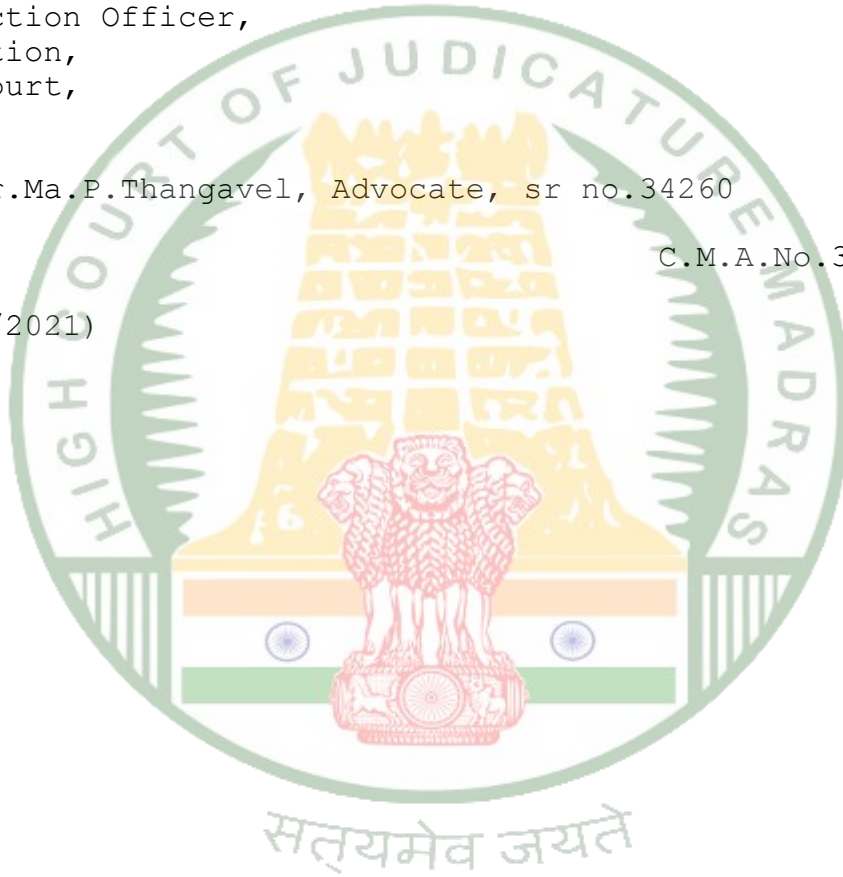
Copy To:

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

+1cc to Mr.Ma.P.Thangavel, Advocate, sr no.34260

C.M.A.No.3059 of 2012

NR(CO)
RMP(11/05/2021)



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