

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.09.2020	Pronounced on: 22.09.2020
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THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1742 of 2016
& C.M.P.No.13074 of 2016

United India Insurance Co Ltd.,
Silingi Bldg. No.134, Greams Road,
Chennai - 600 006. ... Appellant/2nd Respondent

/versus/

1. Mrs.V.Chandra,
2. V.Gopi,
3. V.Balamurugan, ...Respondents 1 to 3/Petitioners
All are residing at
No.3, Indira Nagar, 4th Street,
Tondiarpet, Chennai - 600 081.
4. P.Raja,
S/o.P.Perumal,
No.31, Samiyar Thottam,
Vyasarpadi, Chennai. ...4th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.04.2016 made in O.P.No.4813 of 2011 on the file of the Motor Accidents Claims Tribunal (In the II Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran,

For R1 to R3 : Mr.A.A.Venkatesan

For R4 : exparte before the Tribunal

J U D G M E N T

(The case has been heard through video conference)

Heard the Learned Counsel for the Appellant and the Learned Counsel for the respondent Nos. 1 to 3.

2. This Appeal is preferred by Insurance Company being aggrieved and dissatisfied with the award passed by the Tribunal. On 09.07.2011, at about 21.15 hours, while the accident victim Thiru.Velayudham was crossing near Ennore High road near IOC 1st bridge, Chennai, an auto bearing registration No.TN-05-T-2649 coming from North to South direction rash and negligently hit against Thiru.Velayudham. The said Thiru.Velayudham sustained head injury. He was admitted in the Stanley Hospital between 09.07.2011 to 27.08.2011. Thereafter, he was discharged with advice to attend O.P. On 12.09.2011, he died. Hence, his wife and sons have preferred the claim petition against the owner of the auto and his insurer, claiming a sum of Rs.9,00,000/- as compensation.

3. In the claim petition, it is stated that the deceased was working as Coolie in a steel work shop and earning Rs.300/- per day. He was about 58 years at the time of accident.

4. The Insurance Company filed counter stating that the accident occurred due to negligence of the deceased, without due care, he tried to cross the road. Hence, met with an accident. The claimant Nos. 2 and 3, who are sons of the deceased are not depending on the deceased. They are adult male members aged about 29 and 27 respectively and they are not dependants on the deceased and not entitled for compensation. The death of the victim was not due to the accident injury. He died due to cardiac arrest, after he got discharged from the hospital.

5. The Tribunal, relying upon the F.I.R marked as Ex.P.1, concluded that the accident was due to rash and negligent driving of the 1st respondent vehicle driver. The Doctor examined on behalf of the plaintiff has opined that the deceased died due to head injury and complication arising out of the treatment and therefore, in the absence of post-mortem certificate, no presumption could be drawn that the death was not due to the accident injury. Based on the age mentioned in the death memorandum Ex.P.8 and death certificate Ex.P.9, the Tribunal fixed the age of the deceased as 60 years and relying upon the legal heirs certificate Ex.P.10, the claimants were considered as dependants of the deceased for awarding compensation.

6. The Tribunal has fixed the monthly income of the deceased as Rs.7,500/-, after deducting 1/3rd towards his personal expenditure. The Tribunal has applied multiplier 9 and awarded a sum of Rs.5,40,000/- towards pecuniary loss. Under the other heads, had awarded Rs.3,46,000/- and totally fixed the compensation at Rs.8,86,000/- with the following breakup.

1. Loss of Pecuniary Benefits	Rs.5,40,000/-
2. Loss of Love and Affection	Rs.1,50,000/-
3. Consortium	Rs.1,00,000/-
4. Loss of Estate	Rs.50,000/-
5. Medical Expenses	Rs.1,000/-
6. Transport Expenses	Rs.20,000/-
7. Funeral Expenses	Rs.25,000/-
Total Compensation	Rs.8,86,000/-

With 7.5% interest from the date of numbering the petition (21.11.2011) till the date of deposit.

7. The Learned Counsel appearing for the appellant would submit that the accident occurred on 09.07.2011. After performing surgery on his right Fronto Temporo Parietal region on 23.07.2011, he was discharged from the hospital on 27.08.2011. Thereafter, he died on 12.09.2011 due to cardiac arrest. There is no nexus between the road accident and the death. The cause of death not due to the accident injury. Hence, the Tribunal ought not have applied the multiplier for fatal accident. Further, the Learned Counsel would point that the Tribunal has awarded excessive compensation on the other heads without any basis. It has awarded Rs.1,50,000/- for loss of love and affection, Rs.1,00,000/- for loss of consortium, besides an additional sum of Rs.50,000/- was awarded for loss of estate. Though, there is no material to show that the claimants incurred any loss of estate. Pointing out the excess compensation awarded for transport and future expense, the Learned Counsel sought for interference.

8. The Learned Counsel appearing for the claimants/respondents would contend that the deceased at the time of accident was working as a Coolie in a Steel work shop and earning Rs.300/- per day. The Tribunal ought to have fixed notional income as Rs.9,000/- instead of Rs.7,500/- Likewise, additional compensation ought to have been paid for future prospects since the deceased was below the age of 60 years at the time of accident.

9. Heard the Learned Counsel and perused the records.

10. As far as the accident is concerned, the Tribunal has held that the auto driver was at fault. The negligence has

been attributed to the auto driver based on the F.I.R. Since there is no other contra evidence regarding negligence, the finding of the tribunal is confirmed. The death memorandum marked as Ex.P.8 indicates that the deceased Mr.Velayudham having monthly income of Rs.900/- as Coolie, died out of cardiac arrest. However, P.W.3 Doctor, on perusing the records has given an opinion that might have occurred due to head injury and the complication arising out of the said injuries. Ex.P.11 indicates that on 09.07.2011, the deceased Thiru.Velayadhum got admitted at Government Stanley Hospital for his head injury sustained in the accident. Surgery was conducted on 23.07.2011 and 50ml of blood was evacuated from right Fronto Temporo Parietal region. He was treated as inpatient till 28.07.2011 and got discharged. Ex.P.7, discharge summary, indicates that he was discharged after being fully recovered and was advised to report after two weeks, for review.

11. The Learned Counsel appearing for the claimants would submit that he was attending the hospital daily as a out patient and he died in the hospital on 12.09.2011. He rely upon the death memorandum marked as Ex.P.8, which indicates that he was admitted in the hospital on 12.09.2011 at 9.53.a.m. He died on the very same day at 2.30 pm. However, as pointed out by the Learned Counsel for the appellant, there is no post-mortem conducted. The body was handed over with summary that the patient died out of cardiac arrest.

12. From the close scrutiny of the records it is evident that the victim has died two months after the accident. He was discharged from the hospital on 27.08.2011. After two weeks, he died. Therefore, the nexus between the accident and the death appears to be broken. However, this Court is of the opinion that the accident could have expedited the death as opined by the doctor in his certificate marked as Ex.P.11. The death certificate and death intimation which are marked as Ex.P.8 and Ex.P.9 indicates the age of the deceased as 60 years. The Tribunal has fixed age as 60 years and in the absence of any other evidence, the age of the victim has to be taken as 60 years. Having crossed the age of 60 years, question of awarding future prospects does not arise.

13. The Tribunal without any proof has accepted the contention of the claimants that the deceased was earning Rs.300/- per day and arrived monthly income as $(25 \times 300) = \text{Rs.7,500/-}$. There is no iota of evidence to show that the deceased had any income or skill to earn. In such cases, the nominal income for the Coolie with no skill ought to have been only at Rs.6,000/- per month. The Tribunal besides fixing the higher income without any basis, has also very generously awarded compensation for loss of love and affection, loss of

consortium, loss of estate and funeral expense, which are disproportionate and contrary to settled principle of law. Hence, the award of the Tribunal is modified as below:-

Loss of Pecuniary [Rs.6,000 x 2/3 x 7 x 12]	Rs.3,36,000/-
Loss of consortium/1 st claimant	Rs.40,000/-
Loss of love and affection 2 nd and 3 rd claimants [Rs.20,000/- each]	Rs.40,000/-
Medical expenses	Rs.1,000/-
Transport expenses	Rs.10,000/-
Funeral expenses	Rs.15,000/-
Totally	Rs.4,42,000/-

14. The said award amount shall be apportioned among the claimants as below:-

- (i). 1st Claimant/wife is awarded Rs.3,00,000/-
- (ii). 2nd and 3rd Claimants is awarded Rs.71,000/- each.

15. The Learned Counsel appearing for the appellant has stated that pursuant to the interim order passed by this Court, the entire award amount has been deposited into the credit of MCOP Account 4813 of 2011 out of which, the claimants has already withdrawn 50%. If it is so, the appellant herein is permitted to withdraw the balance amount laying in the deposit, less the amount payable to the claimants as per the modified award.

16. In the result, the Civil Miscellaneous Appeal is Partly-allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Motor Accidents Claims Tribunal,
(II Court of Small Causes),
Chennai.
2. The Section Officer,
VR Section,
Madras High Court.

+1cc to Mr.A.A.Venkatesan, Advocate Sr.30996

C.M.A.No.1742 of 2016
& C.M.P.No.13074 of 2016

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srg 10/05/2021