

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.02.2020

CORAM:

THE HONOURABLE Mrs Justice V.BHAVANI SUBBAROYAN

C.M.A.No.3049 of 2013

1.Ramaiah Devar

2.Tirukkammal

3.Minor Kumuthaballi

4.Minor Sakthivel

(Minors 3 & 4 are rep. by the NF /
Guardian Father Ramaiah Devar)

...Appellants/Claimants

Vs.

1.Unishkhan

2.Mohamed Iqbal

3.The Oriental Insurance Co. Ltd.,
No.281, Cross Cut Road,
Gandhipuram,
Coimbatore-12.

4.Krishnamoorthy S/o Krishnasamy

5.The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Collectrate Post, Dindugal.

6.T.Santhakumari W/o Daniel

(R2 remained ex-parte before Tribunal)

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree of the Motor Accident Claims Tribunal (Fast Track Court No.II), Gobichettipalayam in M.C.O.P.No.141 of 2007 dated 20.11.2007.

For Appellants : Mr.Ma.P.Thangavel

For Respondent : No Appearance
Nos.1 & 4

For Respondent-3 : Mr.E.Rajadurai
for Mr.M.B.Gopalan

For Respondent-5 : Mrs.R.T.Sundari

For Respondent-6 : Mr.K.Stephendas

R2 : Exparate before tribunal

JUDGMENT

Challenging the order of dismissal of the claim petition in M.C.O.P.No.141 of 2007 dated 20.11.2007 by the learned Judge, Fast Track Court No.II, MACT, Gobichettipalayam, the present appeal has been preferred by the appellants/claimants.

2.The germane facts which leads to the filing of the present appeal are as follows:

a)On 16.02.2002, at about 13.25 hrs, when the deceased Murugan was travelling from Madurai to Tiruppur in a bus bearing Registration No.TN-45-N-1730 belonging to the Tamil Nadu State Transport Corporation Limited, Trichy, when it was nearing Kovai Pirivu in Dharapuram to Tiruppur Main Road, a car bearing Registration No.TN-37-A-4899 which came from east to west direction crashed with the bus, causing grievous injuries to the bus passengers as well as the deceased Murugan. They were taken to the Government Hospital, Dharapuram for treatment. Thereafter, the deceased Murugan was shifted to Government Hospital, Coimbatore. For further treatment, the deceased was taken to Lalitha Private Hospital at Coimbatore, where he died due to the injuries sustained in the accident on 27.02.2002.

b)The Tribunal, after analysing the oral and documentary evidence, dismissed the claim petition on the grounds that the name of the deceased was not found in the FIR as well as in the charge sheet, demise of Murugan was not informed to the police station and also that post mortem of Murugan was not done and came to the conclusion that the deceased was not involved in the said accident.

3.Aggrieved by the order of dismissal of the claim petition by the Tribunal, the present appeal has been preferred by the

appellants/claimants.

4.Heard the learned counsel for the parties.

5.According to the learned counsel for the appellants, the Tribunal had failed to note the Accident Register copy issued by the Government Hospital, Dharapuram/Ex.A2, in which it is evident that the deceased was admitted on 16.02.2002 and further, the case diary marked through PW3/Head constable attached to Kundadam Police Station pertains to the accident in Cr.No.46 of 2002, in which the name of the deceased was found in Serial No.12. Moreover, the Tribunal failed to consider the evidence of P.W.4/Medical Officer of the Lalitha Private Hospital, Coimbatore, who had produced Ex.P16, the entire case sheet of the deceased and the treatment given to him. Therefore, he pleaded that the appellants are entitled to compensation and the same has to be granted considering the age and income of the deceased.

6.In support of his contentions, the learned counsel for the appellants relied upon the decision of the Hon'ble Supreme Court in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Ltd., [2014 (2) SCC 735] wherein it has held that proof of income is not mandatory in case of self employed labour. He also further relied on the decisions in Sri Ramanchandrappa V. The Manager, Royal Sundaram Alliance Insurance Company Ltd., [2011 (2) TNMAC 190 (SC)] and Nutan Rani V. Gurmail Singh [2018 SCC Online SC 744]

7.The learned counsel appearing on behalf of the third respondent/Insurance Company submitted that the name of the deceased was not found in the FIR as well as in the charge sheet. He further submitted that no proof of age and employment was produced by the claimants. The learned counsel contended that the mother of the deceased alone is entitled to claim compensation. The learned counsel vehemently disputed the involvement of the deceased in the accident and pleaded to dismiss the appeal.

8.The learned counsel for the fifth respondent/Transport Corporation submitted that there was no fault on their driver and stated that the accident had occurred only due to the rash and negligent driving of the driver of the car bearing Registration No.TN-37-A-4899 and since the car was insured with the third respondent herein, the Insurance Company is liable to pay the compensation. He further submitted that a criminal case in Cr.No.46 of 2002 has been filed against the first respondent/driver of the car and contended that since they are not responsible for the said accident, they are not liable to pay the compensation to the claimants.

9.I have given careful consideration to the submissions made by the respective counsels.

10.As regards to the involvement of the deceased Murugan in the said accident, Ex.A2/Accident Registry copy of the Government Hospital, Dharapuram and Ex.P16/case sheet of the private hospital evidences that Murugan had died due to the injuries sustained in the accident that occurred on 16.02.2002. The evidences of PW3/Head Constable of Kundadam Police Station and PW4/Medical Officer of Lalitha Private Hospital, Coimbatore where the deceased had been admitted for further treatment also affirms the same.

11.As regards to negligence aspect, it is evident from the materials available on record that the accident had occurred only due to the rash and negligent driving of the driver of the car which was insured with the third respondent/Insurance Company herein. Hence, this Court comes to the conclusion that the third respondent/Insurance Company is liable to pay the compensation to the claimants.

12.This Court after having considered the materials available on record and having heard the submissions of the respective Counsels, is of the view that the notional income of the deceased can be fixed at Rs.3000/- per month and after deducting 50% towards the personal expense of the deceased, the monthly income comes to Rs.1500/-, which amounts to Rs.18,000/- per annum. As per the well settled proposition, considering the age of the deceased i.e., 23 years at the time of accident, 17 multiplier is taken for arriving the loss of dependency, which comes Rs.3,06,000/- (18,000x17). For loss of love and affection, for parents a sum of Rs.10,000/- each and a sum of Rs.2,500/- each for the sister and brother of the deceased are awarded. A sum of Rs.5,000/- is granted for transportation and a sum of Rs.10,000/- is granted towards funeral expenses. Thus, the details of the award amount is as follows:

Heads	Amount Awarded by this Court
Loss of Dependency	Rs.3,06,000/- (1500x12x17)
Transportation	Rs.5,000/-
Funeral Expenses	Rs.10,000/-
Loss of Love & Affection	Rs.25,000/- (Rs.10,000+10,000+2,500+2,500)
Total	Rs.3,46,000/-

13.In the result, the Civil Miscellaneous Appeal is partly

allowed. Accordingly, the appellants/claimants are entitled to receive a sum of Rs.3,46,000/- as compensation. The appellants 1 and 2 are entitled to receive a sum of Rs.1,00,000/- and Rs.2,00,000/- respectively and the third and fourth appellants are entitled to receive a sum of Rs.23,000/- each and appellants 3 and 4 are being minors, their share amounts shall be deposited in any one of the nationalized bank till they attain majority and the mother/second appellant is entitled to receive the accrued interest of the minors deposited in fixed deposit once in every three months. The third respondent herein/Insurance Company is directed to deposit the award amount to the credit of M.C.O.P.No.141 of 2007, on the file of the Motor Accident Claims Tribunal Fast Track Court No.II, Gobichettipalayam together with interest 7.5% per annum from the date of claim till the date of deposit within a period of six weeks from the date of receipt of this order. On such deposit being made, the appellants are permitted to withdraw their proportionate share amount by filing an appropriate application. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

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

2.The Section Officer,
Vernacular Section,
Madras High Court.

सत्यमेव जयते

+1cc to Mr. N.Vijayaraghavan, Advocate, SR. No. 11529

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VBA (CO)
RN(29/07/2020)