

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2020

Coram

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1013 of 2017

and

C.M.P.Nos. 4960 and 7428 of 2017

The Branch Manager,
M/s. New India Assurance Co. Ltd.,
No.66-C, North Car Street,
Tiruchengode - 637 211. ... Appellant /2nd Respondent

vs.

1.M.Vijimol

2.Minor Jenmol

3.Minor Jerusha

4.Minor Jebusha

5.Minor Judha

... Respondents/Claimants

6.P.K.Muthusamy

... 6th Respondents /1st Respondent

7.John Edward

... 7th Respondent/3rd Respondent

(minor respondents 2 to 5 are
rep. By the next friend and
mother R1)

R6 Set exparte before Tribunal vide order
dated 12/09/2017 in CMP.11202/2017

Appeal filed under Section 173 of the Motor Vehicles Act,
1988 against the judgment and decree dated 18.12.2015 made in
M.C.O.P.No.1016 of 2013 on the file of the Motor Accidents
Claims Tribunal (Special District Judge), Krishnagiri.

For Appellant : Mr.J.Chandran

For Respondents : Mr.Mukund R.Pandiyan
for R1 to R5
Mr.V.Ramesh Vel for R7
R6 - set exparte
Mr.M.Elumalai,
Govt. Advocate

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is preferred by the insurer of the vehicle said to have involved in the accident resulting in the death of the deceased, who was working as Headmaster at the relevant point of time.

2.Before going into the contentions raised, let us consider the facts governing.

2.1.Admittedly, the deceased was a Government Servant and he was working as a Headmaster in a Government school. The accident occurred on 15.11.2007. An F.I.R. has been registered on the very same day. The F.I.R. states that both the legs of the deceased were broken. The deceased died on 04.08.2009. He was taking leave continuously even prior to the accident on a regular basis. However, after the accident, he was absent for about five months. Thereafter, he rejoined duty and working in the capacity of Headmaster. He died on 04.08.2009 and a post mortem certificate was obtained, which has been marked as Ex.P2 while the F.I.R. has been marked as Ex.P1. Even thereafter, no claim petition has been filed. It was filed only on 18.11.2013 after a period of four years from the date of death of the deceased.

2.2.The Tribunal passed an award for a sum of Rs.48,05,000/-. The Tribunal held that the document marked in Ex.P11, which is the Service Register of the deceased would show the factum of accident and the loss of income. The medical bills filed in Ex.P8 series have been taken into consideration. After adding other heads, the total compensation has been arrived at.

3.As the learned counsel appearing for the appellant has raised serious objection with respect to the functioning of the deceased after the accident, we called for the original records from the office of the Assistant Educational Officer, Veppanapalli. Accordingly, the entire records have been placed before us including the Service Register pertaining to the deceased. The records would clearly show that excepting the few

months after the accident, the deceased was functioning in the capacity of Headmaster till his death.

4.Learned counsel appearing for the appellant would submit that there is absolutely no reason as to why the claim petition has not been filed after the accident said to have happened on 15.11.2007. No discharge summary has been filed, no final report, wound certificate to show the accident, liability on the part of the insurer and the amount spent. Strangely, only after completion of four years from the date of death of the deceased, the claim petition has been filed. R.W.1, the doctor, who is the author of Ex.P2, has clearly deposed that the death was not due to the accident. Though the result of the viscera test was not made known, his evidence would clinch the case against the claimants. The Tribunal has totally gone wrong in granting the compensation for such a huge amount, especially, when the first respondent/first claimant has been given employment on compassionate ground as seen from the records produced by the learned Government Advocate.

5.Learned counsel appearing for respondents 1 to 5/claimants submits that the fact that the deceased was on leave for considerable length of time itself would show the factum of accident coupled with Ex.P1. Even the doctor has stated about the surgeries undergone by the deceased. The Tribunal considered the relevant facts and granted the compensation. The appellant has not raised these contentions specifically before the Tribunal. Therefore, the award of the Tribunal requires no interference.

6.We do not wish to say anything except the facts narrated above. Admittedly, the deceased was working after the accident as seen from Ex.P11 and the records produced by the learned Government Advocate. No doubt, Ex.P1 read with Ex.P11 would show that there must have been some accident occurred. The doctor who was examined as R.W.1 also noted the surgeries conducted. Therefore, we are inclined to conclude the factum of accident. Incidentally, medical expenses made and the amount payable towards disability are liable to be paid. So also, loss of income for the unearned leave and the entitlement of the deceased cannot be questioned. However, admittedly, the deceased was working after the said period. He was also taking leave on very many occasions every month even earlier. Therefore, the question as to whether the death was due to the accident cannot be answered in favour of the claimants, especially, in the light of the evidence of the doctor. The deceased, for the reasons known to him, has not filed any claim petition during his life time. The accident was on 15.11.2007 and he died on 04.08.2009, which is nearly after two years. Even four years thereafter, no claim petition has been filed. The doctor who conducted the post

mortem has clearly stated that the death was not due to the accident. Even in the cross examination, he reiterated the said fact. Thus, the Tribunal was totally wrong in coming to the conclusion that the death was due to the accident. The circumstances governing including the admitted facts would clearly establish the fact that the death was not due to the accident. This we hold so for the reason that the deceased did not choose to file claim petition during his life time and no such claim petition has been filed even four years thereafter.

7. In such view of the matter, we are inclined to grant a sum of Rs.1,44,288/- by taking the monthly income at Rs.24,048/- as fixed by the Tribunal. This income we arrive at towards loss of income for a period of six months as a maximum, during which period, he was not able to attend to his work. Similarly, the amount awarded by the Tribunal at Rs.1,23,000/- towards medical expenses is confirmed. We award a sum of Rs.50,000/- towards future medical expenses and a sum of Rs.25,000/- for pain and suffering. The amounts awarded by the Tribunal at Rs.10,000/- for transportation charges and Rs.2,000/- for damage to clothes are confirmed. For the disability, we give another sum of Rs.1,45,000/-. Accordingly, we arrive at a sum of Rs.4,99,288/- which is rounded off to Rs.5,00,000/- as being the maximum that could be given to the claimants and the seventh respondent, who is the father of the deceased. Though the claimants filed the claim petition in the year 2013, which is after six years from the date of accident, we are inclined to award interest from the date of accident. Accordingly, a sum of Rs.5,00,000/- is fixed as compensation with interest at the rate of 9% per annum from the date of accident till the date of realisation. The amount now awarded by this Court shall be apportioned amongst the claimants and the seventh respondent in the same ratio as ordered by the Tribunal. The Advocate fee fixed by the Tribunal is not disputed. Hence the same is confirmed.

8. It is submitted by the learned counsel appearing for the appellant insurance company that the entire amount awarded by the Tribunal has already been deposited. Therefore, the appellant insurance company is permitted to withdraw the excess amount.

9. We direct the Tribunal to transfer the respective shares of the amount awarded by this Court by way of RTGS to the bank accounts of first claimant/first respondent and the seventh respondent within a period of three weeks from the date of receipt of a copy of this judgment. On such transfer, they are entitled to withdraw the same. Insofar as the shares of the minor claimants 2 to 5/respondents 2 to 5 are concerned, the Tribunal is directed to invest the same in fixed deposit in any one of the nationalised banks till they attain majority. The

first claimant/mother of minor claimants 2 to 5 is entitled to withdraw the interest accrued on the minors' deposits once in three months directly from the Bank.

10. In view of the above, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

11. Before parting with the case, we place on record the services rendered by Mr.M.Elumalai, learned Government Advocate.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mmi

To

1.The Special District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

2.The Record Keeper,
V.R. Section, High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No. 6869

+1cc to Mr.Mukund R.Pandiyan, Advocate, S.R.No. 5804

C.M.A.No.1013 of 2017

RSV(CO)
GN(19/12/2020)

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