



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.202 of 2009

and

M.P. (MD) Nos.1 & 2 of 2009

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The Branch Manager
M/s.The United India Insurance
Company Limited
Thiruverambur, Trichy-15

... Appellant/2nd Respondent

-VS-

1.T.Poomani

2.T.Balamurugan

3.T.Subramanian

4.T.Kalaivani

... 1 to 4 Respondents/Petitioners

5.M/s.Bharakath Engineering Industries
Private Limited
C10, Developed Plots Estate
Thuvakudi, Tiruchy

... 5th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, in M.C.O.P.No.2110 of 2001, dated 16.10.2008, on the file of the Motor Accident Claims Tribunal, I Additional District Court, Trichirappalli.

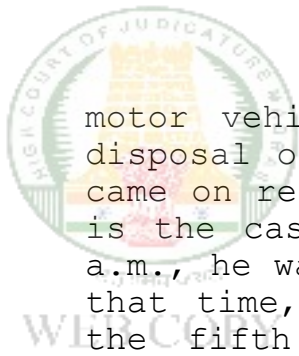
For Appellant : Mr.J.S.Murali

For Respondents : Mr.A.Saravanan for R1 to R4
No appearance for R5

J U D G M E N T

This civil miscellaneous appeal is preferred by the Insurance Company questioning the Judgment and Award, dated 16.10.2008, passed in M.C.O.P.No.2110 of 2001, by the Motor Accident Claims Tribunal / I Additional District Court, Trichirappalli.

2. The claim petition was filed by one P.Thangamani claiming compensation of Rs.2,00,000/- for the injuries sustained by him in a



motor vehicle accident occurred on 20.03.2001. However, pending disposal of the claim petition, he passed away and his legal heirs came on record in the year 2006 and pursued the claim petition. It is the case of the original claimant that on 20.03.2001, at 09.30 a.m., he was walking along Trichy - Thanjavur Road at Thuvakudi. At that time, a Fiat Car bearing registration No.TN45 D8650 owned by the fifth respondent herein and insured with the appellant - Insurance Company, which was coming from Thanjavur to Trichy, dashed against him. In the impact, he sustained multiple grievous injuries all over the body and he was taken to Thiruverumbur Medical Centre and after providing first aid, he was admitted in BHEL Main Hospital, wherein he was taking treatment as outpatient for more than 62 days. It appears that he died on 09.12.2005 and the death certificate was marked as Ex.P7.

3. The Tribunal, having observed that no evidence was forthcoming to show that the deceased succumbed to the injuries sustained in the accident, however, awarded Rs.90,000/- towards permanent disability; Rs.10,000/- towards pain and suffering and Rs.10,000/- towards nutrition and transportation expenses. Totally, the Tribunal awarded Rs.1,10,000/- along with interest at the rate of 7.5% per annum.

4. Mr.J.S.Murali, learned counsel appearing for the appellant, would argue that the Tribunal has erred in awarding Rs.90,000/- towards permanent disability and Rs.10,000/- for pain and suffering, overlooking the fact that the injured claimant died and hence, the award passed under these heads are unsustainable. According to the learned counsel, if the injured claimant dies pending disposal of the claim petition, the legal heirs are entitled for the medical expenses alone. In this regard, the learned counsel relies on the decisions in **The Managing Director, Pandiyan Roadways Corporation, Madurai, vs. S.Rajalakshmi and others [(2000) 4 CTC 528]**; **Manoharan vs. Managing Director, Tamil Nadu State Transport Corporation [(2010) 2 TNMAC 243]**; **Branch Manager, M/s.Oriental Insurance Co. Ltd. vs. Monohar [(2018) ACJ 1035]** and **National Insurance Co. Ltd. vs. Sivabakkiyam (Deceased) [(2020) ACJ 531]**. I find force in the contention of the learned counsel for the appellant.

5. A perusal of the records would reveal that the original claimant sustained injuries in the accident that took place on 20.03.2001 and he died on 09.12.2005 i.e.after a lapse of nearly 4 ½ years. As observed by the Tribunal, the body was not subjected to the postmortem and there is no material to show that the death occurred consequent to the injury sustained in the accident. So, as pointed out by the learned counsel for the appellant, the legal heirs of the original claimant would be entitled only for the medical expenses. However, in the case on hand, no medical bill was produced before the Tribunal. Hence, I am of the opinion that the



claimants are not entitled for compensation, except Rs.10,000/- awarded under the head of nutrition and transportation expenses.

6. At this juncture, the learned counsel appearing for the appellant submitted that as per the interim orders of this Court, the appellant - Insurance Company has deposited 50% of the award amount with accrued interest and costs and the respondents 1 to 4 herein were permitted to withdraw the said amount. In view of the above findings of this Court, it is open to the appellant - Insurance Company to withdraw the amount whatever is lying in the claim petition over and above the modified award amount of Rs.10,000/-. It is made clear that the appellant - Insurance Company shall not initiate proceedings to recover the amount withdrawn by the claimants.

7. Resultantly, the civil miscellaneous appeal is partly allowed and the Judgment and Award, dated 16.10.2008, passed in M.C.O.P.No.2110 of 2001, by the Motor Accident Claims Tribunal / I Additional District Court, Trichirappalli, are modified to the effect as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1.The I Additional District Judge,
Motor Accident Claims Tribunal,
Trichirappalli.



2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies).

WEB COPY
+1cc Mr.J.S.Murali, Advocate Sr.No.26535

C.M.A. (MD) No.202 of 2009
and
M.P. (MD) Nos.1 & 2 of 2009

18.12.2020

KMV (CO)
NR (05/02/2021) 4P : 5C