



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.12.2020

Delivered on : 21.12.2020

CORAM:

THE HONOURABLE **MR. JUSTICE G. ILANGO VAN**

WEB COPY

C.M.A. (MD) No.402 of 2010

and

M.P. (MD) No.1 of 2010

The Oriental Insurance Company Limited,
Through its Divisional Manager,
Sivasakthi Shopping Complex,
24-E, 1st Floor,
12/A, S.N.High Road,
Tirunelveli - 627 001. ... Appellant /2nd Respondent

Vs.

1.Senbagathammal
2.Avudaiammal
3.Rajeswari
4.Gandhimathi ... Respondents 1 to 4/Claimants 1 to 4
5.Thalavai ... 5th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award and ex-order dated 06.08.2009 in M.C.O.P.No.1135 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Court, Tirunelveli.

For Appellant	: Mr.S.Veeranasamy
For R1 to R4	: Mr.S.P.Maharajan
For R5	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree, dated 06.08.2009 passed in M.C.O.P.No.1135 of 2007 on the file of the Motor Accident Claims Tribunal - Principal District Court, Tirunelveli.

2. The respondents 1 to 3/ claimants filed a claim petition before the Motor Accident Claims Tribunal - Principal District Court, Tirunelveli, in M.C.O.P.No.1135 of 2007, claiming compensation for the death of Gandhimathi Velar. The claimants are the legal representatives of the deceased Gandhimathi Velar and the Tribunal, after taking into consideration the oral and documentary evidence filed by both sides, awarded a sum of Rs.1,31,000/- (Rupees One Lakh and Thirty One Thousand only) as compensation for the claimants. Against which, the Appellant/ Insurance Company preferred this Civil Miscellaneous Appeal.



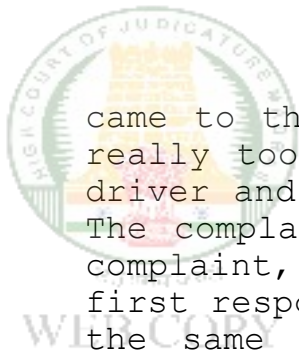
3. It is the case of the respondents 1 to 3/ claimants before the Tribunal that on 19.03.2007, at about 06.30 hours, the deceased person was walking towards a tea shop from his house in Velar street at Melaseval. At that time, an Auto bearing Registration No.TN-74-7958 belonging to the first respondent was driven by its driver in a rash and negligent manner and dashed against the deceased. Because of that, the deceased sustained injury and was admitted in Tirunelveli Medical College Hospital on 20.03.2007 and on 23.03.2007, he was discharged in a bad condition and later, died due to the accidental injuries, on 24.04.2007, in his house. In respect of the accident, a case in Crime No.68 of 2007 was registered on the file of the Munnirpallam Police Station. At the time of the incident, he was working as a potter and was earning a sum of Rs.2,500/- (Rupees Two Thousand Five Hundred only) per month. The first petitioner is the wife, the second and third petitioners are daughters, and the fourth petitioner is the grandson of the deceased and claiming a compensation of Rs.2,00,000/- (Rupees Two Lakhs only), they approached the Tribunal.

4. The contention of the appellant and the second respondent before the Tribunal is that the deceased sustained only simple injuries in the accident. It is also denied that the accident took place only due to the rash and negligent driving on the part of the first respondent's vehicle driver. The death was natural one. Even after the death of the deceased, no further complaint was lodged by the petitioners before the Police Station for altering the offence under Section 304-A IPC. No post mortem was also conducted. During the life time, he do not make any claim and the petitioners are not the dependents of the deceased.

5. With these pleadings, on the side of the petitioners, two witnesses were examined as P.W.1 and P.W.2 and four documents were marked as Ex.P1 to P4. On the side of the respondents, no witness was examined and no document marked.

6. At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent's vehicle driver and regarding the quantum, taking into consideration the age and the avocation of the deceased, assessed the compensation at Rs.1,31,000/- (Rupees One Lakh and Thirty One Thousand only) with interest at the rate of 9% p.a. Challenging the award and the liability, the Insurance Company has filed this Appeal.

7. According to the appellant/ Insurance Company, even though the accident took place on 19.03.2007, the First Information Report was registered belatedly and in the petition, no information were given with regard to the manner of the incident. So, according to him, the accident would not have taken place, but, the Tribunal

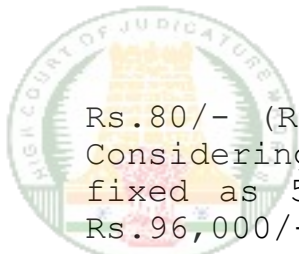


came to the conclusion that the accident mentioned in the petition really took place involving the first respondent's vehicle and his driver and only because of his negligence, the accident took place. The complainant was the injured, who is the deceased now, in the complaint, has stated that when he was walking towards tea shop, the first respondent's vehicle driver viz., Sheik @ Sheik Maideen, drove the same in a rash and negligent manner and by taking reverse direction, hit against the deceased. So, the manner of the accident as spoken to by the deceased, at the time of giving the statement, shows that the first respondent vehicle's driver was not careful, while he was taking the Auto in the reverse direction. Even the Police after investigation, filed a final report before the Judicial Magistrate No.V, Tirunelveli, against the first respondent's vehicle driver. Mere delay in the First Information Report cannot have any bearing upon the accident. Because, immediately after the occurrence, the deceased was taken to the hospital and only on intimation from the hospital, the Police went to the Hospital and recorded the statement of the deceased. So, the question of delay does not arise. So, the arguments on the side of the appellant, require no consideration and it is rejected.

8. The next argument on the side of the appellant / Insurance Compnay is that the cause of the death of the deceased was not proved, since no postmortem was conducted. But, from the evidence of P.W.1 and Wound Certificate, it is seen that the deceased sustained fracture on the hip region, which is evident from Ex.P.3. From the final report filed by the Police, after investigation and Ex.P2- wound certificate, we find that he was subjected to X-ray on the Pelvic region and found that he suffered grievous injuries and he was admitted in the Casualty Ward. X-ray shows that there was a fracture on the right upper femur bone. The date of admission in the Government Hospital was on 20.03.2007 and as per the Death Certificate, he died on 22.04.2007 and within a month. So, according to the appellant / Insurance Company since the death took place only after a month, naturally it would have been a natural death and not due to the accidental injuries. But, P.W.1, in the course of evidence, has stated that only because of the accidental injuries, he was bedridden for more than a month and died. It is also a basic principle that no post-mortem is necessary, in all cases of fatal death involving motor vehicle accidents. The failure on the part of the claimants to approach the Police subsequent to the death of the deceased to lodge, a second complaint cannot be considered to be a fatal one. Considering the age of the deceased, the only probability is that death have been caused due to the complications of injuries. So, the findings of the Tribunal on this respect require no interference.

9. Regarding the compensation as mentioned earlier, the age of the deceased was assessed at 80 years on the basis of the entry of the Wound Certificate. In the absence of any contra evidence, it

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Rs.80/- (Rupees Eighty only) per day. That amount was reasonable, Considering the relevant period of the accident. Multiplier was fixed as 5, by adopting this, the loss of income, was fixed at Rs.96,000/- (Rupees Ninety Six Thousand only) and to this amount the customary damages, such as, Transport to Hospital, loss of love and affection, loss of consortium, damage of cloth, were added and a total amount was arrived at Rs.1,31,000/- (Rupees One Lakh Thirty One Thousand only). The categorisation of the damages as well as the compensation awarded under these categories shows that it was a reasonable and fair. So, considering the age of the deceased, the total compensation fixed by the Tribunal requires no interference at the hands of this Court. So, I find no valid reason to differ from the award of the Tribunal.

10. Hence, this Civil Miscellaneous Appeal is dismissed and the award passed by the Motor Accident Claims Tribunal, Principal District Court, Tirunelveli, in M.C.O.P.No.1135 of 2007, is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant / Insurance Company is directed to deposit the entire award amount, less the amount already deposited, if any, within a period of two months positively. On such deposit, the respondents / claimants shall withdraw their shares with proportionate interest apportioned by the Tribunal after filing proper petition before the Tribunal immediately.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

Ls
To

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

2.The Section Officer,(2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.P.Maharajan, Advocate Sr.No.26808

C.M.A. (MD)No.402 of 2010
21.12.2020