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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.1620 of 2010

and

M.P.No.1 of 2010

New India Assurance Co.Ltd.,
No.402, Tenkasi Road,
Rajapalayam.

... Appellant /R3 in Trial Court

Vs.

1. Kaliyammal
2. Karthikeyan
3. Gopal
4. Ezhil
5. Chinnaswamy
6. Somasundaram
7. Somasundaram

[6th and 7th respondents were the 1st and 2nd respondents before the tribunal and they remained ex-parte before the tribunal. Hence, summons to 6th and 7th respondents herein may be dispensed with]

... Respondents/Petitioners 2 to 5 and
RR1, 2 in Trial Court

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 19.02.2010 made in M.C.O.P.No.605 of 2001 on the file of the Motor Accident Claims Tribunal (Principal District Court), Villupuram District, Villupuram.

For Appellant : Mr.K.Vinoth for
: M/s.Elveera Ravindran

For Respondents : M/s.P.Kavitha Balakrishnan
(for R1 to R4)
: Notice Served (for R5)
: Ex-parte (for R6 to R7)

J U D G M E N T

This appeal is laid as against the judgment and decree dated 19.02.2010 made in M.C.O.P.No.605 of 2001 on the file of the



Motor Accident Claims Tribunal (Principal District Court), Villupuram District, thereby, it awarded the compensation to the tune of Rs.2,00,000/-.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimants are that the deceased first claimant was returning by his bullock cart from Ulundurpet to Thirunavalur on 19.06.2001 after unloading the paddy bags at Ulundurpet Regulated Marketing Committee, near Senthamangalam bus stop. At that time, a lorry owned by the second respondent was driven by the first respondent in a rash and negligent manner in the same direction and hit on the back side of the bullock cart due to which, one bullock seriously injured and subsequently, died. The entire bullock cart was damaged and the deceased first claimant was seriously injured on his right leg and all over the body. Due to multiple fracture on his right leg, his right leg was amputated above the knee. While pending the claim petition, he died due to the injury sustained by him.

4. Resisting the claim petition, the third respondent/Insurance Company filed a counter stating that only due to the rash and negligent driving of the deceased first claimant of his bullock cart, the accident took place and as such, the third respondent is not liable to pay compensation.

5. On the side the of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.23 were marked. On the side of the respondents, R.W.1 was examined, but no exhibit was marked.

6. The Tribunal after considering the oral and documentary evidence, awarded a sum of Rs.2,00,000/- as compensation payable by the second and third respondents. Aggrieved by the same, the third respondent has preferred the present Civil Miscellaneous Appeal.

7. The learned counsel for the third respondent/Insurance Company submitted that the deceased first claimant, who met with an accident, died while pending the claim petition. Therefore, the legal heirs, viz., other claimants, are not entitled for compensation for the injury sustained by the deceased first claimant and they are only entitled for the medical expenses and they are not entitled for compensation for their love and affection, transportation charges and other expenses incurred by them. He further submitted that the deceased first claimant ridden his bullock cart in a rash and negligent manner and as such, he invited the accident and as such, the third respondent is not liable to pay any compensation. Though the Tribunal found



that the death was not caused due to the injury sustained in the accident, the Tribunal awarded the compensation in favour of the legal heirs. As per the proviso to Section 306 of the Indian Succession Act, the legal representatives of the deceased are not entitled for compensation for the permanent disability, pain and sufferings suffered by the deceased.

8. Per contra, the learned counsel for the claimants submitted that the deceased first claimant died only due to the injury sustained by him in the accident. Due to the accident, he suffered crush injury on his right leg. Immediately, he was taken to the Government Hospital and thereafter, he was referred to Ramachandra Hospital, Chennai. He had undergone three surgeries and his right leg was amputated above the knee level. Therefore, the deceased first claimant's disablement was assessed at 80%. Even then, the Tribunal had taken into account only 50% and that too granted a sum of Rs.2,000/- per percentage of disablement. Though the claimants produced medical bills to the tune of Rs.82,133/-, the Tribunal has awarded the medical expenses only to the tune of Rs.60,000/-.

9. Heard the learned counsel for the third respondent/Insurance Company as well as the learned counsel for the claimants.

10. On 19.06.2001, the deceased first claimant was returning by his bullock cart from Ulundurpet to Thirunavalur after unloading the paddy bags at Ulundurpet Regulated Marketing Committee, near Senthamangalam bus stop. At that time, a lorry owned by the second respondent and insured by the third respondent was driven by the first respondent in a rash and negligent manner, hit the back side of the bullock cart of the deceased first claimant. Due to the said accident, one bullock died and the entire bullock cart was damaged. The deceased first claimant sustained crush injury on his right leg and other injuries all over the body. Immediately, he was taken to Villupuram Government General Hospital and thereafter, he was referred to JIPMER Hospital, Puducherry. He had undergone three surgeries and finally his right leg was amputated above the knee level. Immediately, after amputation of his right leg, his permanent disability was assessed at 80%. Therefore, he could not be able to do his avocation. While pending the claim petition, the deceased first claimant died on 16.10.2002. Though P.W.1 wife of the first claimant deposed that the injured had undergone three surgeries and he had been taken treatment for 1 1/2 years till his death, the claimants did not produce the discharge summary and other medical records to show that the injured claimant died only due to the injury sustained during the accident which led to his death.



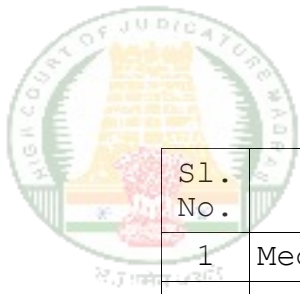
11. On a perusal of the medical bills, which was marked as Ex.P.12, it reveals that even till his death, he was continuously taking treatment at Ramachandra Hospital as out patient. There is no dispute about the amputation of his right leg due to the accident and they spent a sum of Rs.82,133/- as medical expenses. It is also seen from the records that every month, the deceased first claimant had come to Chennai for his treatment at Ramachandra Hospital.

12. As rightly pointed out by the learned counsel for the claimants, the Tribunal failed to award compensation by applying multiplier method, when the deceased was assessed 80% of permanent disablement. After the amputation of his right leg, he could not continue his avocation and he could not even walk without the help of others. From the date of accident, viz., on 19.06.2001, and till his death, viz., on 16.10.2002, he had taken treatment continuously. Therefore, he lost his income and he would have suffered pain and sufferings during that period.

13. The learned counsel for the third respondent/Insurance Company submitted that the claimants are not entitled for any compensation in respect of the injury sustained by the deceased first claimant and also pain and sufferings suffered by him as per proviso to Section 306 of the Indian Succession Act. It is true that after the death of injured, the legal heirs are not entitled for compensation for the injury and pain and sufferings of the deceased.

14. In the case on hand, though P.W.1 categorically deposed that the deceased first claimant had undergone three surgeries and his right leg was amputated and during his course of further treatment at Ramachandra Hospital, Chennai, he died due to the injury sustained by him at the time of accident. But the claimants failed to produce the discharge summary and medical records to that effect. Therefore, this Court feels that the present case is peculiar one, since the deceased first claimant died only due to the injury sustained by him in the accident took place on 19.06.2001. In fact, the entire bullock cart was damaged and one bullock also died during the accident. The accident had happened only because of the rash and negligent driving of the first respondent. Due to illiteracy, the claimants were not able to find the medical records. Even though the deceased first claimant was taking treatment for more than 16 months, the claimants failed to maintain the medical records properly. However, they marked medical records as Ex.P.12, which reveals that the deceased first claimant had taken treatment till his death at Ramachandra Hospital, Chennai.

15. Therefore, this Court treated the present case as special case and inclined to modify the award as follows:-



Sl. No.	Head	Amount awarded by the Tribunal	Amount awarded by this Court
1	Medical expenses	68,000	82,500
2	Permanent Disability	1,00,000	1,50,000
3	Pain and Sufferings	20,000	50,000
4	Death of Bullock	10,000	10,000
5	Damage of Bullock Cart	5,000	15,000
6	Transportation	5,000	50,000
Total		2,00,000	3,57,500

16. In the result the Civil Miscellaneous Appeal is dismissed, however, the compensation amount is enhanced as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.2,00,000/- to Rs.3,57,500/-.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The respondents 1 and 5/claimants 2 and 6 are entitled to get the compensation amount in the ratio as apportioned by the Tribunal.

(iv) The Appellant/third respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(v) On such deposit, the respondents 1 and 5/claimants 2 and 6 are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(vi) the respondents 1 and 5/claimants 2 and 6 shall pay requisite Court fee before the receipt of the copy of the judgment for the enhanced compensation.

(vii) It is made clear that this judgment shall not be cited as a precedent.

(viii) In respect of other aspects, the award of the Tribunal is confirmed.

Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

kv



To

1. The Motor Accident Claims Tribunal
(Principal District Court),
Villupuram District.

WEB COPY

Copy To

The Section Officer,
V.R. Section,
High Court of Madras.

+1cc to Mr.Elaveera Ravindran, Advocate, S.R.No.24049
+1cc to Mrs.Kavith Balakrishnan, Advocate, S.R.No.24369

C.M.A.No.1620 of 2010

KV (CO)
GN(16/09/2021)