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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2021

PRONOUNCED ON : 21.04.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.3043 OF 2011

AND

C.M.P.NO.10330 OF 2018

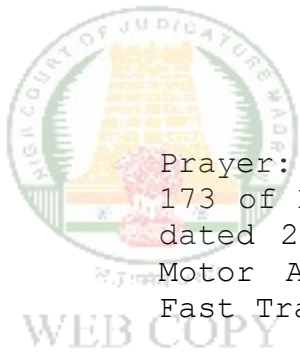
1. Sundaram (died)
2. Leelavathi
W/o.Late Sundaram
3. Vaijayanthi
D/o.Late Sundaram
4. Nithyakala
D/o.Late Sundaram
(Appellants 2 to 4 are brought on record
the legal heirs of the deceased sole
appellant, order dated 18.01.2019 made in
C.M.P.No.11447 to 11449 of 2017
in C.M.A.No.3043 of 2011)

..Appellants/Claimants

.Vs.

1. Nataraj
D/o.Gopalakrishnan
2. M/s.Auto Shell Center P.Ltd,
No.10, SIDCO Industrial Estate,
Coimbatore - 21.
3. National Insurance Company Ltd.,
Div.No.10, Flat No.101-106 NT
BMC House Caunt Place,
New Delhi-110 001.

..Respondents/Respondents



Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.04.2011 in M.C.O.P.No.1429 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District Judge cum Fast Track Court No.I, Coimbatore.

For Appellants	::	Mr.C.Deivasigamani
For R1 and 2	::	Mr.G.B.Saravana Bhavan
For R3	::	Mrs.N.B.Surekha

JUDGMENT
(heard through video-conferencing)

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 29.04.2011 in M.C.O.P.No.1429 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District Judge cum Fast Track Court No.I, Coimbatore.

2.Mr.C.Deivasigamani, learned counsel appearing for the appellants/claimants had submitted his arguments. As per the submissions of the learned counsel for the appellants, the appellant/Sundaram was the claimant before the Motor Accident Claims Tribunal, Additional District Judge cum Fast Track Court No.I, Coimbatore. As per the claim petition, the appellant herein as claimant, was travelling in his Auto Rickshaw bearing Registration No.MDB-990 on 30.10.2006 at 10.15 a.m., at Periyasamy Road, from East to West direction slowly and following the traffic rules when he was at Venkatachalam Road, a car bearing Registration No.TN-37-AQ-7777 came from Venkatachalam Road from South to North direction driven by the 1st respondent at a high speed without blowing horn and hit against the Auto Rickshaw which almost crossed the junction, the left side of the Auto Rickshaw was damaged. The appellant suffered fracture over his left leg and left hip and bone. He was admitted at Kumaran Hospital. The appellant/claimant underwent operation and plate was fixed over his left leg. He was first admitted at Kumaran Hospital and after the first aid he was shifted to Kongu Nadu Hospital on 30.10.2006 and discharged on 15.11.2006. Again he was re-admitted at Rex Ortho Hospital for further treatment on 06.12.2006 and discharged on 09/12/2006. He is still taking treatment as out-patient. On the date of the accident, the claimant was aged 58 years due to fracture in the leg and hip, he is unable to drive the Auto Rickshaw and therefore he lost his income. He is the only bread-winner of the family since the appellant/claimant was in hospital, he could not give complaint. The TIW West had filed a case against the appellant/claimant.



They sent notice on 23.11.2007 after due enquiry, based on the evidence before the learned Motor Accident Claims Tribunal, Additional District Judge cum Fast Track Court No.I, Coimbatore dismissed the claim petition. Aggrieved by the same, the claimants have preferred this appeal.

Point for consideration:

Whether this appeal is to be allowed and the order of dismissal of the claim petition is to be set aside?

3.On perusal of the order passed by the Motor Accident Claims Tribunal, Additional District Judge cum Fast Track Court No.I, Coimbatore, it is found that on proper appreciation of the evidence let in before the learned Sub-Judge, the claim petition had been dismissed. The contention of the appellant that he was hospitalized immediately after the accident and only after he was discharged from the hospital, he approached the police for registering the F.I.R. By then, the Traffic Investigation Wing had already registered a case against the claimant. Also, it is stated that the Criminal Case ended in conviction before the Court of the learned Magistrate. The learned Tribunal had drawn adverse inference at the conduct of the claimant. The injured claimant having fractured in his leg. But, if he was conscious about his claim petition, he would have lodged the complaint at the earliest. He had attempted to register the case only after discharge from the hospital. By that time, a case had already been registered by the Traffic Investigation Wing against him. The Court of the learned Judicial Magistrate had acquitted him and only after the same, the claimant had filed the claim petition.

4.As per the written submission of the learned counsel for the 3rd respondent/Insurance Company before the learned Tribunal, there was no independent witness was examined to prove the charge that the rash and negligence of the car driver alone contributed the accident. There is no nexus between the injury caused on the claimant and his subsequent death. Therefore, nothing survives in this appeal. The learned counsel for the 3rd respondent/Insurance Company relied on the judgment of this Court in Ramu (Died) by Lrs & Another Vs. H.Ramachandran & Another, reported in 2007 ACJ 1588. The relevant paragraph which reads as follows:

"the case of an injured-claimant the cause of action will not survive in respect of the legal representatives of the claimant. In all the above decisions, the Division Bench as well as the



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Supreme Court had taken note of Section 306 of the Indian Succession Act and have held that claim for compensation in respect of personal injuries will not be available for the legal representatives provided the death was not caused as a result of the accident. The Supreme Court has also pointed out that the position would be different if the suit for damages had resulted in a decree in favour of plaintiff in which case the decree amount would form part of the estate of the deceased to which the legal representatives would be entitled to. But where no such decree has been passed, the legal representatives of the claimant will not be entitled to compensation due towards personal injuries are concerned."

5. Moreover there is no pleading regarding cause of death. The "legal maxim" Action Personalis Moritur Cum Persona will squarely apply to the present case. The compensation is awarded only to the injured victim of the accident and not to his legal heirs. When the injured died subsequently, the award only medical expenses can be granted to the legal heirs. Therefore, nothing survives in this appeal. Point for consideration is answered against the appellant and in favor of the Insurance Company.

6. In the result, this appeal is also dismissed. No costs.

Sd/-

Deputy Registrar (P & A)

//True Copy//

Sub Assistant Registrar

gbi

To

1. The Additional District Judge cum Fast Track Court No.I,
Motor Accident Claims Tribunal, Coimbatore.
2. The Section Officer,
V.R.Section, High Court of Madras.

+lcc to Mr.G.B.Saravana Bhavan, Advocate, S.R.No.24346

+lcc to Mrs.N.B.Surekha, Advocate, S.R.No.24825

C.M.A.No.3043 of 2011
and C.M.P.No.10330 of 2018

KV(CO)

CS/23/11/2021