



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.03.2021

Pronounced on : 13.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.2479 of 2012

Sulaiman Serif (Deceased)

1.Musthiri Jan
W/o.Late Sulaiman Serif

2.Kulob Jan
S/o.Late Sulaiman Serif

3.Sakeera Banu
D/o.Late Sulaiman Serif

4.Musthafa
S/o.Late Sulaiman Serif

.. Appellants

Vs.

1.P.Rajendran
S/o.Palaniappan

2.United India Insurance Co.Ltd.,
Tiruchengode, Namakkal District.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.03.2004 in M.C.O.P.No.1611 of 2002 on the file of the Motor Accident Claims Tribunal cum Fast Track Court No.3, Namakkal.

For Appellants : Mr.C.Kulanthaivel

For R2 : Mr.D.Bhaskaran



JUDGMENT

The Civil Miscellaneous Appeal had been filed by the appellants seeking enhancement of compensation granted by the Tribunal in the award dated 10.03.2004 in M.C.O.P.No.1611 of 2002 on the file of the Motor Accident Claims Tribunal cum Fast Track Court No.3, Namakkal.

2.The appellants are the claimants before the Tribunal in M.C.O.P.No.1611 of 2002 on the file of the Motor Accident Claims Tribunal cum Fast Track Court No.3, Namakkal. They filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the death of one Sulaiman Serif, who died in the accident that took place on 19.09.1997.

2. (a) Brief facts relevant to the Appeal are as follows:

On 19.09.1997 at about 9.30 p.m., the injured/petitioner was going in Tiruchengode Namakkal Main Road in a TVS 50 bearing Registration No.TN 28 T 2955. The petitioner was occupying the back of the vehicle and one Radha @Selvakumar was driving the TVS 50 TN 28 T 2955. When they were going near Ulagappampalayam High School towards east one Rajasekaran crossed the road and the said Radha @ Selvakumar who was driving the TVS 50 bearing Registration No.TN 28 T 2955 in a rash and negligent manner could not control the vehicle and hit against the said Rajasekaran and the petitioner and the driver of the TVS 50 Radha @ Selvakumar fell on the Tar Road the petitioner sustained injuries on his head and right clavicle and all over his body. He had sustained fractures on his skull and right clavicle heavy blood occurred out. He becomes unconscious. The petitioner was taken to the Government Hospital, Tiruchengode. He was referred to the Government Hospital, Erode on the same day and admitted in the intensive care unit. The petitioner was still unconscious and continued to be in a coma stage. Doctors did not gave any assurance to his life since the injury is on his head. So the petitioner was again shifted to the Senthil Neuro Hospital, Erode for better treatment. He was admitted in the petitioner had spent more than Rs.1,25,000/- (Rupees One Lakhs and Twenty Five Thousand) towards medical expenses. After discharge from the Senthil Neuro Hospital Erode, the petitioner was regular by taking treatment about the month. Even after more than one year still the petitioner could not lift his right hand normally before. The petitioner suffered very much with physical pain and mental agony due to the injuries caused to him in the above accident. The above accident was only due to rash and negligent driving of the driver of the vehicle TVS 50 TN 28 T 2955.



3.Mr.C.Kulanthaivel, learned counsel appearing for the appellant had submitted his arguments. As per his submissions, the claimants before the Tribunal are the appellants herein. The original claimant Sulaiman Serif suffered injuries due to the rash and negligent driving of the driver of the TVS 50 bearing Registration No.TN-28-T-2955 and the injured claimant was admitted in hospital for 45 days. Subsequently, he filed a petition, when the claim petition was pending, he died. Therefore, his legal heirs impleaded themselves in the claim petition. After due enquiry, the learned Motor Accident Claims Tribunal cum Fast Track Court No.3, Namakkal, had arrived at a conclusion that the vehicle of the 1st respondent and its driver had caused the accident. Point for consideration 1 was answered in favor of the claimants. While considering the point for consideration 2, regarding compensation, the learned Tribunal held that the legal heirs of the deceased are not entitled to the compensation for pain and sufferings and they are entitled only for medical expenses, but still the learned Tribunal dismissed the petition.

4.During arguments, the learned counsel for the claimants as appellants submitted that as legal heirs of the deceased, claimants / appellants are entitled to medical expenses and other expenses connected like Extra Nourishment, Transportation expenses etc., and he had relied on the rulings of this Court in

- 1) Venkatesan (Deceased) and Others Vs. Kasthuri and Others reported in 2013 (1) TNMAC 723
- 2) K.Ramesh (Deceased) and Others Vs. M.Natesan reported in 2020 (1) TNMAC 67
- 3) Divisional Manager, New India Assurance Company Limited Vs. S.V.Mani and others reported in 2009 AIR Mad 22.

5.Mr.D.Bhaskaran, learned counsel appearing for the 2nd respondent/Insurance Company submitted his arguments. As per his submissions, in cases of this nature normally they are not entitled to claim compensation under the head "partial permanent disability".Here in this case, the two wheeler was claimed to have hit the deceased, but the actual two wheeler involved in this case was not implicated. The son of the deceased claimant, received the two wheeler from their neighbour on the pretext of seeking compensation and implicated the said vehicle. After filing of the counter before enquiry and after commencement of the enquiry in M.C.O.P.No.1611 of 2002, the 2nd respondent/Insurance Company had engaged an Investigator. The said Investigator had investigated the case independently and filed a report which is marked as Ex.C1, wherein, it is stated that on the date of accident, the vehicle alleged to have been involved was not at all involved and it is a fiction claim and in such things, the appeal lacks merits and is liable to be



dismissed.

6. Points for consideration

Whether the award passed by the Tribunal is to be set aside?

7. Perused the claim petition filed by the claimant before the Motor Accident Claims Tribunal in MCOP.No.1611/2002, the counter filed by the Insurance Company and the Judgment/Order passed by the Motor Accident Claims Tribunal and the Memorandum of appeal filed in this appeal.

8. Perused the rulings cited by the learned counsel for the appellant, the legal representatives/legal heirs of the injured claimant cannot claim compensation as the right to sue does not survive on the death of the injured. If the injured had been treated for injury, medical expenses have to be granted to the legal representatives. In the other heads for compensation to the injured victim of the accident, the same is not available to the legal heirs/legal representatives of the deceased/injured.

9. On perusal of the record, the injured/ claimant has spent Rs.70,174/- for medical expenses. Out of which, Rs.41,055/- towards hospitalization and doctor's fees. Rs.29,119/- for medicines as per the medical bills. Therefore, after the death of the deceased claimant/petitioner, the legal heirs of the deceased claimant are entitled to medical expenses. Therefore, instead of dismissing the claim petition, the learned Tribunal ought to have awarded a sum of Rs.70,174/-. This Court awards a sum of Rs.70,174/- medical expenses to the legal heirs of the deceased claimant.

9 (a) On perusal of the records, it is found that Ex.B1 is the Insurance Certificate for the offending vehicle. Ex.B2 is the Investigation Report regarding this accident. Ex.B3 is also an Investigation Report regarding the same accident. As per Ex.B2 Investigation Report the accident alleged in the claim petition is that the two wheeler bearing Registration No.TN 28 T 2955 has valid Insurance. The owner of the two wheeler bearing Registration No.TN 28 T 2955 had pleaded guilty before the learned Judicial Magistrate, Thiruchengode and paid fine. The owner rider of the two wheeler bearing Registration No.TN 28 T 2955 has valid driving licence.

(b) Ex.B3 is also an Investigation Report dated 27.02.2003 which claims that this alleged accident is a fictitious claim. When there are two Investigation Report, the earliest report



admits the claim as bona-fide claim.

(c) The investigation report dated 27.02.2003 is after a long period from the date of the accident which claims that the accident is a fictitious one. That investigation report cannot at all be accepted, as it is filed after long duration whereas the investigation report under Ex.B2 is subsequent to the accident. The accident had taken place that on 19.09.1997 whereas the Ex.B2 is the investigation report dated 23.11.1999 which is a reasonable time of two years from the date of accident. Whereas Ex.B3 is a long period after the date of the accident.

(d) Therefore, the argument putforth by the learned counsel for the Insurance Company, respondent herein in this appeal that this appeal has to be dismissed as the claim itself is a fictitious one is rejected.

10. The point for consideration is answered in favour of the appellants/claimants and against the respondent/Insurance Company herein.

Accordingly, this Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the amount of Rs.70,174/- towards medical expenses, which this Court determined in this appeal, to the credit of M.C.O.P.No.1611 of 2002 on the file of the Motor Accidents Claims Tribunal cum Fast Track Court III, Namakkal, with accrued interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first appellant/claimant shall be entitled to withdraw the award amount with accrued interest. The appellants are directed to pay appropriate Court fees within a period of two months, failing which, she is not entitled to claim interest on the award amount. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

dh



To

1. Motor Accidents Claims Tribunal
Fast Track Court- III, Namakkal

2. Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.40282

+1cc to Mr.D.Bhaskaran, Advocate SR.No.40917

CMA.No.2479 of 2012

SS (CO)
GMY (29/11/2021)