



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1300 of 2018

1.Kaliyammal
2.Velusamy
3.Chandrasekar
4.Mareeswari
5.Minor Saran
6.Minor Deepak
(Minor appellants 5 & 6 are rep.by
their next friend guardian mother Mareeswari)
... Appellants

Versus

1.Mani
(Notice to R1 may be dispensed with
& set ex-parte before the Tribunal)
2.Royal Sundaram Alliance Insurance Co.,Ltd.,
Krishna Plaza, 1st Floor, No.1, Nachiappa Street,
Behind Bus Stand, Erode-638 001. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.12.2017 made in M.C.O.P.No.305 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.C.Paraneedharan
For R2 : Mr.G.Vasudevan
For R1 : Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed for the enhancement of compensation granted by award dated 15.12.2017 made in M.C.O.P.No.305 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.



2. The appellants are the claimants in M.C.O.P.No.305 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal. They filed the above said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Ammasi, who died in the accident that took place on 06.06.2012.

3. The brief facts which lead to the present appeal are as follows:

On 06.06.2012 at about 12.30 P.M., while the deceased Ammasi was riding a motorcycle bearing Registartion No.TN 34 A 0244 in Kolikalnatham privu Road, proceeding to Tiruchengode New Bus Stand Road, opposite to Baby Tea Stall, the driver of the tipper Lorry bearing Registration No.TN 34 Q 5382 belonging to first respondent, drove the said lorry in a rash and negligent manner without adhering to the road traffic rules, dashed against the Ammasi, due to which Ammasi sustained injuries all over his body and was admitted in a hospital. After discharged from the hospital, he died on 07.07.2012. The appellants herein, who are the legal heirs of the deceased, filed a petition in M.C.O.P.No.305 of 2013 before the Tribunal, claiming a sum of Rs.10,00,000/- towards compensation for the death of their bread-winner.

4. Resisting the claim petition, the second respondent/Insurance Company filed a counter affidavit, denying the manner of the accident, age, occupation and income of the deceased. It is stated that there was no negligence on the part of the driver of the tipper lorry and the accident occurred only due to the negligencr riding of the motorcycle by the deceased and therefore, no amount of liability can be fixed on the second respondent.

5. On behalf of the claimants, P.Ws.1 to 4 were examined and Exs.P1 to P12 were marked and on the side of the second respondent/Insurance Company, R.W.1 was examined and Exs.R1 to R5 were marked.

6. On consideration of the oral and documentary evidence, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the tipper lorry and thereby, fastened the liability on the second respondent/Insurance Company with which the offending vehicle was insured.



7. However, the Tribunal, considering the medical evidence adduced in the form of Ex.P12/discharge summary, was of the view that the death was not due to the accident and though the deceased sustained head injuries he was conscious at the time of discharge. Therefore, the Tribunal awarded compensation only under the heads of medical expenses for sustaining grievous injuries, pain and sufferings and extra nourishment, totalling a sum of Rs.1,00,892/-.

8. Being not satisfied with the quantum of the compensation awarded by the Tribunal, the claimants/appellants have preferred the present appeal.

9. The learned counsel for the appellants/claimants would submit that though the Tribunal has rightly found that the accident had occurred only due to the rash and negligent act of the tipper lorry driver, awarded a very meagre amount as compensation which requires interference. He pointed that the finding of the Tribunal that the death was not due to the accident is erroneous since the deceased had sustained as many as six fractures and was admitted in the hospital for treatment, which alone led to respiratory arrest, being the cause for his death. Therefore, the finding of the Tribunal is liable to be set aside and accordingly, the amount of compensation has to be enhanced appropriately.

10. On the other hand, the learned counsel for the second respondent/Insurance Company would submit that admittedly, though the deceased Ammasi sustained injuries in the accident, he was admitted in the hospital and recovered and also discharged and thereafter only he died. Taking into consideration this aspect, the Tribunal rightly found that the death was not due to the accident and rightly awarded the compensation under the heads of grievous injures, pain and sufferings and medical expenses and therefore, the appellants are not entitled to the enhancement of the compensation and thus, he prays for dismissal of the appeal.

11. The point for consideration arises in this appeal is whether the appellants are entitled to the enhancement of compensation. It is not in dispute that the deceased sustained injuries in the accident and was admitted in the hospital and discharged after treatment. Later, he died after a period of one month from the date of the accident. A perusal of Ex.P12/discharge summary issued by KMC Hospital, Erode, would disclose that the deceased had sustained both simple and



grievous injuries, of which, head injury sustained by him was simple in nature and therefore, at the time of discharge, he was conscious. Therefore, in such circumstances, since the deceased after getting treatment was discharged, it cannot be attributed that the deceased had died only due to the accident. Since the deceased got recovered and later died due to respiratory arrest, the liability cannot be fastened on the Insurance Company by construing that the death had occurred only due to the accident. Therefore, the Tribunal has rightly considered this aspect in a well considered manner and to the maximum extent, has rightly awarded the compensation under the heads of grievous injuries, pain and sufferings and extra nourishment and this Court also does not find any infirmity to interfere with the same. Accordingly, this Court does not find any merit to entertain the present appeal.

12. In the result, this Civil Miscellaneous Appeal is dismissed and a sum of Rs.1,00,892/- awarded by the Tribunal as compensation to the appellants, along with interest and costs, is confirmed. The second respondent-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.305 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal. On such deposit, the appellants 1 to 4 are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by making necessary applications before the Tribunal. The share of the minor appellants 5 and 6 are directed to be deposited in any one of the Nationalised Bank, till they attain majority. On such deposit, the fourth appellant, being the mother of the minor appellants 5 and 6 is permitted to withdraw the accrued interest, once in three months for the welfare of the minor appellants 5 and 6. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR



WEB COPY

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

2.The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.G.Vasudevan, Advocate Sr.66191

C.M.A.No.1300 of 2018

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srg 14/02/2022