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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03.02.2021  
Judgment Delivered on : 15.02.2021

CORAM:

HONOURABLE MR.JUSTICE R.SUBBIAH  
AND  
HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.Nos.3913 and 4575 of 2019  
and  
C.M.P.No.26004 of 2019 in C.M.A.No.4575 of 2019

Senthil Kumar (died)

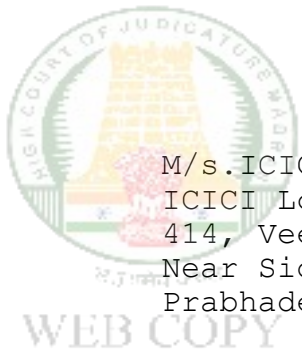
1. Suganthi, W/o.Late Senthil Kumar
2. Minor Sabarna, D/o.Late Senthil Kumar
3. Minor Sanjana, D/o.Late Senthil Kumar  
(minor appellants 2 and 3 represented  
by their next friend and mother,  
the first petitioner Suganthi)
4. Samidurai, S/o.Ponnusamy
5. Arukani, W/o.Samidurai

.. Appellants/Claimants  
in C.M.A.No.3913 of 2019

Vs.

1. Jothivel, S/o.Duraisamy
2. ICICI Lombard General Insurance Co. Ltd.,  
ICICI Lombard Houses,  
414, Veer Savarkar Marg,  
Near Siddhi Vinayak Temple,  
Prabhadeve, Mumbai - 400 025.

... Respondents/Respondents  
in C.M.A.No.3913 of 2019



M/s.ICICI Lombard General Insurance Co. Ltd.,  
ICICI Lombard Houses,  
414, Veer Savarkar Marg,  
Near Siddhi Vinayak Temple,  
Prabhadeve, Mumbai - 400 025.

... Appellant/2<sup>nd</sup> Respondent  
in C.M.A.No.4575 of 2019

Vs.

Senthil Kumar (died)

1. Suganthi, W/o.Late Senthil Kumar

2. Minor Sabarna, D/o.Late Senthil Kumar

3. Minor Sanjana, D/o.Late Senthil Kumar  
(minor respondents 2 and 3 represented  
by their next friend and mother,  
Suganthi)

4. Samidurai, S/o.Ponnusamy

5. Arukani, W/o.Samidurai

... Respondents 1 to 5/Claimants

6. Jothivel, S/o.Duraisamy

... 6<sup>th</sup> Respondents/1<sup>st</sup> Respondent  
in C.M.A.No.4575 of 2019

Prayer: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.09.2018 passed in M.C.O.P.No.184 of 2015 on the file of Motor Accident Claims Tribunal, Principal District Judge, Ariyalur.

For appellants in C.M.A.No.3913  
of 2019 and respondents 1 to 5  
in C.M.A.No.4575 of 2019

: Mr.S.Kaithamalai Kumaran

For appellant in C.M.A.No.4575  
of 2019 and second respondent  
in C.M.A.No.3913 of 2019

: Mrs.R.Sree Vidhya

For 1<sup>st</sup> respondent in C.M.A.No.3913  
of 2019 and sixth respondent in  
C.M.A.No.4575 of 2019

: set ex-parte before the  
Tribunal



## COMMON JUDGMENT

R.SUBBIAH, J

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These appeals are heard through Video Conferencing.

2. For the sake of convenience, the parties are hereinafter referred to as they are arraigned before the Tribunal as Insurance Company and claimants.

3. Not being satisfied with the quantum of compensation awarded by the Tribunal, in and by its judgment dated 12.09.2018 passed in M.C.O.P.No.184 of 2015 on the file of Motor Accident Claims Tribunal, Principal District Judge, Ariyalur, claimants have filed C.M.A.No.3913 of 2019. Questioning the liability fastened on the Insurance Company to pay compensation, the Insurance Company had filed C.M.A.No.4575 of 2019.

4. Since both appeals arise out of one and the same judgment, they are disposed of by this common judgment.

5. The brief facts of the case are as follows:

(a) Claimants are the wife, minor children and parents of the deceased Senthil Kumar. On 17.07.2015 at about 1.15 p.m., while the deceased was riding his motorcycle bearing Registration No.TN-46-B-3971 on the left side of the Venna Kaikatti to Ariyalur Main Road, a TATA Ace goods carriage van, bearing Registration No.TN-61-E-9496, came in a rash and negligent manner and dashed against the two-wheeler in which the deceased was riding. As a result of the said accident, he sustained grievous injuries. Immediately, the deceased was admitted at Government Hospital, Ariyalur and thereafter, he was admitted at Trichy Githanjali Hospital for further treatment, wherein he was treated as in-patient for 15 days. In the accident, his right leg above knee was crushed and the same was amputated. Thereafter, the deceased was discharged from the hospital. The deceased filed a claim petition seeking compensation of a sum of Rs.65,50,000/- for the injuries sustained by him in the accident. Pending the claim petition, the deceased died on 11.04.2017 due to heart attack. Hence, the legal heirs of the deceased have been impleaded as claimants before the Tribunal.

(b) The claimants have stated that, at the time of accident, the deceased Senthil Kumar's body weight was 60 kgs. and in view of the injuries sustained by him in the accident, he was permanently bed-ridden. On account of the same, his weight had increased to 90 Kgs. Similarly, the cholesterol level of the deceased had also excessively increased, which had resulted in



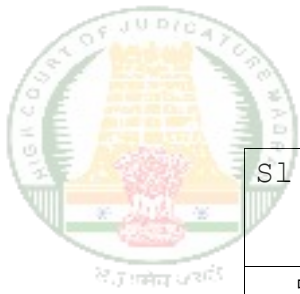
his heart attack. Thus, the claimants contend that the death was only due to the injuries sustained in the accident.

6. Resisting the claim made by deceased, the Insurance Company had initially filed a detailed counter statement, inter-alia contending that the accident had not occurred in the manner as projected by deceased. They have also denied the age, occupation and income of deceased. The Insurance company had also filed an additional counter statement, denying the claim of claimants that due to the injuries sustained in the accident, the deceased was confined to bed, owing to which, his weight had increased from 60 to 90 Kgs., his cholesterol level had excessively increased and he died on 11.04.2017 due to heart attack. It was further stated that the accident occurred on 17.07.2015 and the deceased was discharged from the hospital on 01.08.2015. The deceased also appeared before the Medical Board, and the Board had also issued Ex.P-16 certificate assessing his disability at 80%. At the time of discharge, the health of the deceased was in good condition. Moreover, the deceased died only on 11.04.2017, i.e., after a period of 18 months of the accident. Therefore, the claim of the claimants that the deceased died due to the injuries sustained by him in the accident, is totally unsustainable. There was no nexus between the injuries sustained by the deceased in the accident and his death. Hence, the Insurance Company prayed for dismissal of the claim petition.

7. Before the Tribunal, on the side of claimants, the deceased was examined as PW-1 before his death. Subsequent to his death, PWs.2 to 5 have been examined and 27 documents were marked. On the side of the Insurance Company, one witness was examined and three exhibits were marked.

8. On appreciation of materials available on record, the Tribunal found that the accident had occurred owing to the rash and negligent driving of the TATA Ace vehicle belonging to first respondent in C.M.A.No.3913 of 2019 and held that the Insurance Company, being the insurer of the offending vehicle, is liable to pay compensation. The compensation awarded by the Tribunal is as follows:

| Sl.No. | Head under which the compensation is awarded by the Tribunal | Amount (in Rs.) |
|--------|--------------------------------------------------------------|-----------------|
| 1.     | Loss of income                                               | 8,64,000/-      |
| 2.     | Medical Bills                                                | 1,63,896/-      |
| 3.     | Consortium                                                   | 40,000/-        |
| 4.     | Loss of estate                                               | 15,000/-        |



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| Sl.No. | Head under which the compensation is awarded by the Tribunal | Amount (in Rs.) |
|--------|--------------------------------------------------------------|-----------------|
| 5.     | Funeral expenses                                             | 15,000/-        |
| 6.     | Transportation                                               | 12,800/-        |
|        | Total                                                        | 11,10,696/-     |

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of claim petition till the date of realization.

9. Learned counsel appearing for the Insurance Company submitted that the accident had occurred on 17.07.2015, whereas the deceased died on 11.04.2017, i.e. after a period of 18 months from the date of accident. In fact, he was discharged from the hospital after 15 days of treatment i.e. on 01.08.2015. Pending trial before the Tribunal in the claim petition, the deceased appeared before the Medical Board, which had also issued Ex.P-16 - certificate assessing his disability at 80%. While so, the deceased suddenly died on 11.04.2017 due to heart attack. There is no nexus between the injuries sustained by the deceased in the accident and his death. Though it is the claim of claimants that the deceased was in continuous treatment from the date of accident, absolutely no document was produced to establish the same. However, the Tribunal, without considering all these aspects, by assigning some bald and vague reasonings and also by relying on the evidence of P.W.4 - Doctor, who has stated in his evidence that there was every possibility that the deceased might have been confined to bed due to the injuries sustained by him in the accident and died owing to increase in the cholesterol level, had arrived at a conclusion that the deceased had died owing to the injuries suffered by him in the accident. However, the Tribunal had failed to take into consideration the admission of P.W.4 Doctor in his cross-examination, wherein he had stated that the deceased was hale and healthy at the time of his discharge from the hospital. Further, the reasonings assigned by the Tribunal for connecting the death of the deceased with the injuries sustained by the deceased in the accident, are unacceptable. Hence, for these reasons, the learned counsel appearing for the Insurance Company prays this Court to set aside the award of the Tribunal and exonerate the Insurance Company from its liability to pay compensation.

10. Per contra, the learned counsel appearing for the claimants submitted that the deceased had sustained multiple injuries in the accident. The deceased was working as a heavy vehicle Driver. Due to the injuries suffered by him in the

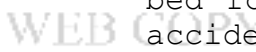


accident, he was unable to attend duty as he was bed-ridden. The evidence of P.W.4 - Doctor, clearly shows that there was every possibility that the deceased, due to his prolonged confinement in bed died owing to increase in the cholesterol level. Therefore, it is incorrect to state that there is no nexus between the injuries sustained by the deceased in the accident and his death.

11. In response, learned counsel for Insurance Company submitted that originally, the claim petition was filed only by the deceased for the injuries sustained by him. It is only after the death of deceased, the legal heirs were impleaded and alleged that deceased died owing to the injuries suffered by him in the accident. In the absence of any document to establish that the deceased was in continuous treatment from the date of accident, there is no scope for awarding compensation to the legal heirs of deceased. Unless and otherwise it is established that there is nexus between the injuries sustained by deceased in the accident and his death, the question of awarding compensation does not arise.

12. Keeping in mind the submissions made on either side, we have considered the rival submissions and perused the materials available on record.

13. In the present case, the accident had occurred on 17.07.2015. The deceased died on 11.04.2017. The first and foremost question that falls for consideration is as to whether the deceased died due to the injuries sustained by him in the accident that had occurred on 17.07.2015 ? Though several documents were marked on the side of claimants, none of the document shows that the deceased was in continuous treatment from the date of accident, i.e. for a period of 18 months. Before the Tribunal, P.W.4 - Doctor deposed in chief examination that there was every possibility that due to prolonged confinement in bed, owing to the injuries suffered by the deceased in the accident, his cholesterol could have excessively increased and it had resulted in cardiac arrest. Based on the deposition of P.W.4 - Doctor, the Tribunal concluded that the deceased died due to the injuries suffered in the accident. In the considered opinion of this Court, only based upon the evidence of P.W.4 - Doctor, one cannot come to the conclusion that there is nexus between the injuries sustained by the deceased in the accident and his death. Moreover, this Court finds that P.W.4 - Doctor, in cross-examination, admitted that the deceased was in good health at the time of discharge from hospital and there is no direct relation between the injuries sustained in the accident and his death. The Tribunal had failed to consider the admission made by P.W.4 - Doctor in the cross-examination. Therefore, this Court does not find any valid



14. Even it is admitted that the deceased was confined to bed for a long time due to the injuries sustained by him in the accident, and on account of such prolonged confinement in bed, he would have suffered mental strain and his cholesterol level would have shot up and that alone is not sufficient to make the claimants become entitled to get the compensation, unless it is proved that the death of the victim of the accident, had a direct nexus with the injuries sustained by him in the said accident. However, in this case, no medical evidence is available to connect the death of the deceased to the injuries sustained by him in the accident. While so, the Insurance Company cannot be mulcted with the liability to pay the compensation. As observed above, it is the bounden duty of the claimants to establish that there is nexus between the injuries sustained by the deceased in the accident and his death, but in this case, claimants have miserably failed to prove the same. Therefore, his case had to be treated as a case of injury and compensation has to be awarded accordingly.

16. Before the Tribunal, the deceased examined himself as P.W.1 and reiterated his contentions made in the claim petition, particularly with reference to the amputation of his right leg, the period of his hospitalization and the loss of his employment after the accident. It was the case of claimants that the deceased was employed under P.W.2 as a lorry driver and he was earning a sum of Rs.19,500/- p.m. In support of their contentions, PW-2 was examined, who deposed that he was running SBT Transport, wherein the deceased was employed as a Driver and was asked to attend duty 15 days in a month and he was paid salary of Rs.1,300/- per day. Except Ex.P15- Salary Certificate, no document was produced to show that P.W.2 is running SBT transport, where the deceased was employed. In the said circumstances, the Tribunal has fixed the notional monthly income of the deceased at Rs.6,000/- p.m. and deducted 1/4 towards personal expenses. Given the nature of injuries suffered by the deceased, particularly the amputation of his right leg which had occasioned in deprivation of his employment, the Tribunal had rightly applied multiplier method and awarded a sum of Rs.8,64,000/-  $[(6000-1500) \times 12 \times 16]$  as compensation under the head 'loss of income'. The Tribunal awarded a sum of Rs.1,63,896/- towards medical bills as per Exs.P7 to P9.



Further, the Tribunal had awarded reasonable amounts under the other heads. In the facts and circumstances of the present case, as well as considering the plight of the minor children, this Court is not inclined to set aside the compensation awarded by the Tribunal. Since the compensation amount is confirmed in this case only considering the peculiar facts and circumstances of the case, the same cannot be taken as a precedent in any other case.

17. In the result, both the appeals (C.M.A.No.3913 of 2019 filed by the claimants and C.M.A.No.4575 of 2019 filed by the Insurance Company) are dismissed. The Insurance Company is directed to deposit the compensation of Rs.11,10,696/- (Rupees Eleven Lakhs Ten Thousand Six Hundred and Ninety Six only), less the amount already deposited, together with interest at 7.5% p.a. from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of this judgment. On such deposit being made by Insurance Company, the wife and parents of deceased/respondents 1, 4 and 5 in C.M.A.No.4575 of 2019 are permitted to withdraw their respective shares, as apportioned by Tribunal, along with proportionate/accrued interest, and costs, if any awarded by the Tribunal, less the amount, if any already withdrawn by them, by filing necessary application before the Tribunal. The share of minor claimants (respondents 2 and 3 in C.M.A.No.4575 of 2019) is directed to be deposited in any interest bearing Fixed Deposit in any Nationalised Bank till they attain majority (by renewing it periodically) and the first respondent in C.M.A.No.4575 of 2019/mother of the minor claimants, is entitled to withdraw interest thereon once in three months towards taking care of the minors. There shall be no order as to costs in the present appeals. Connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

cs/gm/rsh



To

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

Copy to:

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

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.8675

+1cc to Mr.R.Sree Vidhya, Advocate, S.R.No.9152

Pre-delivery judgment  
in  
C.M.A.Nos.3913 and 4575 of 2019

GJ(CO)  
SU(01/10/2021)