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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2021

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNA KUMAR

C.M.A. NO.3326 OF 2014

and

M.P.No.1 of 2014

M/s.ICICI Lombard Motor Insurance
Company Ltd.,
No.140, Nungambakkam High Road,
Chennai-600 034.

... Appellant/2nd Respondent

..Vs..

S.Sabastian (Since died)

1.S.Daisy

2.S.Soumiya

3.S.Sangeetha

4.S.Sanubu

5.C.Sisili

... Respondents/ Petitioners

6.R.Vimala

.. Respondent/1st Respondent

(R6-Set exparte in lower Court)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned IV Judge, Court of Small Causes, (MACT), Chennai in M.C.O.P.No.198 of 2009 dated 11.06.2012.

For Appellant	:	Mrs.R.Sree Vidhya
For Respondents	1 to 5	: No Appearance
	R6	: Set Exparte

J U D G M E N T

Challenging the award passed by the learned IV Judge, Court of Small Causes, (MACT), Chennai in M.C.O.P.No.198 of 2009 dated 11.06.2012, the appellant/Insurance Company has preferred the instant appeal.



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2. Heard Mrs.R.Sree Vidhya, learned counsel appearing on behalf of the Insurance Company. None appears on behalf of the respondents. Hence, with the consent of the learned counsel for the appellant, the matter has been taken today through Video Conferencing.

3. The brief facts of the case are as follows:-

On 29.06.2008 at about 19.00 hrs., when the deceased claimant tried to cross the Ambattur Estate Signal at Collector Nagar, at that time a car bearing registration No.TN-02-W-8255 was driven by its driver in a rash and negligent manner hit the deceased, due to which, he sustained grievous injuries. He was admitted in the Hospital and thereafter he has taken continuous treatment. Despite continuous treatment, he died on 19.07.2009. The deceased Sabastian filed the claim petition, claiming a compensation of Rs.2,50,000/- for the injuries sustained by him in the accident. Pending MCOP, the claimant Sabastian died on 19.07.2009 and the legal heirs of the deceased were impleaded as party in the aforesaid proceedings. According to the claimants, the deceased was taken continuous treatment in the hospital due to the injuries sustained by him in the accident and he could not able to recover and he died due to complications caused due to the injuries in the chest and the body of the deceased. In order to prove the same, the doctors P.W.2 and P.W.3 were examined on the side of the claimants and they deposed that due to the injuries sustained in the accident and despite continuous treatment taken, he died on 19.07.2009 due to septic on the heart. Based on the aforesaid evidence, the Tribunal has awarded a sum of Rs.4,74,800/- as compensation to the claimants.

4. The appellant/Insurance Company has filed an appeal before this Court, challenging the award on the ground of contributory negligence and there is no nexus between the injury and the death of the deceased.

5. But PW3 in his evidence had stated that the injuries caused in the accident is the root cause for the death of the deceased. There is no rebuttable evidence placed by the Insurance Company before the Tribunal to disprove the reasons for the cause of the death of the deceased. Therefore, this Court is of the view that the award passed by the Tribunal is perfectly valid.

6. On the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P1 to P9 were marked, whereas R.W.1 was examined but no documents were marked on the side of the respondents. P.W.1 categorically stated that the deceased died due to the ill-effects of the accident that took place on 29.06.2008. Exs.P1 to P3 held that the accident taken place on 29.06.2008; Exs.P4 to P6 reveals that the deceased sustained injuries due to the said accident and Ex.P9/medical certificate was marked on the side of the claimants to prove that the deceased died due to the injuries sustained by him in



the accident. P.W.3/Dr.Mathiazhagan deposed and stated that the deceased had taken continuous treatment but however, he died on 19.07.2009 due to the injuries sustained by him in the said accident. Based on the oral and documentary evidences, the Tribunal had held that the accident had occurred due to the negligence on the part of the offending injured vehicle and the Insurance Company is liable to pay the compensation to the claimants. No other additional material or any other materials were produced before this Court to prove that the deceased died due to some other reasons and not relating to the injuries caused in the accident. There is no other rebuttable evidence placed before this Court to disprove the cause for the death of the deceased. Hence, this Court accepts the findings of the Tribunal in awarding compensation to the claimants by fixing the negligence on the part of the appellant/Insurance Company. Therefore, the contentions of the appellant that the cause for the death of the deceased have no nexus with the accident, cannot be accepted and the same is unsustainable.

7.Insofar as the quantum is concerned, according to the appellant, they are not disputing the quantum awarded by the Tribunal and therefore, the present appeal is arising only on the ground of negligence on the part of the deceased but the same has not been established by the appellant and the appellant had not proved that there is no nexus between the injury caused in the accident and the death of the deceased, which is the root cause for his death. On considering the above facts, there is no merits in the appeal. Consequently the appeal is liable to be dismissed.

8.Accordingly, the Civil Miscellaneous Appeal is dismissed. The Insurance Company is directed to deposit the entire amount less the amount already deposited if any, along with proportionate interest within a period of six weeks from the date of receipt of a copy of this order. Connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

DP

To

1.The IV Small Causes Court,

(The Motor Accident Claims Tribunal) Chennai.

2.The Record Keeper,V.R. Section, High Court, Madras.

+1cc to Mrs.R.Sree Vidhya, Advocate SR.No. 19200

C.M.A. No.3326 of 2014
and M.P.No.1 of 2014

Rk (CO)

<https://hcservices.ecourts.gov.in/hcservices/>
A.SK(30.09.2021)