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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.3051 of 2019

1.M.Arumugam
2.A.Nagammal
3.C.Thilakavathi
4.Minor C.Suguna
5.Minor C.Udhayakumar
6.Minor C.Ramyabharathi
(Minor appellants are represented by
their mother guardian, 3rd appellant)

... Appellants/Claimants

Vs.

1.R.Suryakumar

2.ICICI Lambard General Insurance Co, Ltd.
Sigma Towers, 1st Floor,
Narayanasamy Naidu Layout,
Coimbatore.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the judgment and decree dated 26.11.2018 in MCOP No.1495 of 2014 on the file of the Motor Accidents Claims Tribunal/Special Subordinate Judge, Coimbatore.

For Appellant :Mr.C.Thangaraju

For Respondents :Mrs.Srividya (for R2)
No appearance for R1

JUDGMENT

[Judgment of the Court was delivered by V.SIVAGNANAM, J.]

This Civil Miscellaneous Appeal has been filed by the claimants to set aside the dismissal order dated 26.11.2018,



passed by the Motor Accidents Claims Tribunal, Special Sub-Judge, Coimbatore in MCOP No.1495 of 2014.

2.The case of the claimants is that on 08.04.2014 at 05.00 p.m, the deceased A.Chinaraj was travelling as a pillion rider in the TVS XL heavy duty bearing Reg.No.TN-37-AP-8880 along with his co-worker on Kovai to Kulathupalayam infront of Saratha Kilagate company from south to north. At that time, a motorcycle bearing Reg.No.TN-43-E-6030, came in the same direction driven by the first respondent in a rash and negligent manner and while over taking the deceased' vehicle, dashed against the deceased motorcycle. In the impact, the deceased fell down on the road and sustained severe injuries with bloodshed on his left leg ankle and foot and multiple injuries all over his body. Immediately, he was taken to the Coimbatore Government Hospital and admitted as inpatient from 08.04.2014 to 14.04.2014 and he died on 01.05.2014. The deceased, who was aged about 28 years at the time of accident and was electrical worker in Kavi Electronics with monthly income of Rs.15,000/-, died due to the injuries sustained in the said accident. The wife, children and parents of the deceased filed the claim petition before the Tribunal claiming compensation of Rs.25,00,000/-, but the Tribunal dismissed the claim petition. Aggrieved over the same, the present appeal has been filed.

3.The learned counsel appearing for the appellants/claimants would contend that the Tribunal failed to arrive at the conclusion that on 01.05.2014, the deceased succumbed to the injuries, sustained by him on 08.04.2014 when he met with the accident. The Tribunal brushed aside the evidence as found in postmortem certificate, wherein it had been shown that the deceased had sustained subscalpal contusion measuring 6 x 4 c.m over right occipital region and skull base fracture noted over right posterior cranial fossa as cause of death. He would submit that the observation of the Tribunal is erroneous and needs to be assailed.

4.The learned counsel appearing for the respondent Insurance Company contended that the accident was happened on 08.04.2014 and the deceased was in hospital till 14.04.2014 and thereafter, he was discharged. After discharging from the hospital, he died on 01.05.2014. In the accident register, it was recorded that he sustained two lacerated injuries on his left leg. There was no injury recorded as he had sustained on his head. In the postmortem certificate (Ex.P.6), it was recorded that he was died due to skull base fracture on the head of the deceased, thus, the learned counsel submitted that there is no nexus



between the cause of death and the accident. There is no medical evidence to show that he died due to the injuries sustained by him in the accident. The Tribunal dismissed the claim petition and thus, she pleaded to dismiss the appeal.

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5.This Court carefully considered the submissions of the learned counsel for the appellants/claimants and the learned counsel appearing for the second respondent/Insurance Company and perused the materials available on record.

6.In the postmortem certificate (Ex.P.6), it was recorded that the deceased died out of the injuries sustained in the road accident. The cause of his death is that due to the injuries sustained subscalpal contusion and skull base fracture on the head, he died. Admittedly, in the medical report (Ex.X.1), the Doctor, who gave treatment, recorded two lacerated injuries measuring 4x4x1 cm over dorsum of (Left) foot and a lacerated injury measuring 4x3x1 over medical aspect of left ankle with the swelling and tenderness. No injury in the head was recorded. But the cause of death was due to the subscalpal contusion and skull base fracture injuries as indicated in the postmortem certificate (Ex.P.6). The fact that the motor accident had happened on 08.04.2014 and the deceased was under treatment till 14.04.2014 in the hospital and he died on 01.05.2014, is not disputed by either side. The only dispute is the non-mentioning of the head injury in the accident register. The non-mentioning of head injury is possible in a road accident. There is a chance for the injuries sustained internally and consequent upon, it will come to the knowledge later. In the absence of any strong evidence to show that the deceased would have sustained head injury elsewhere after discharging from the hospital, we cannot rule out that the deceased would have possible of sustained injury in the head. Under these circumstances, the finding of the Tribunal is unsustainable. Hence, we set aside the finding in this regard and hold that the claimants are entitled for compensation.

7.In respect of quantum, this Court, considering the age of the deceased and cost of living, fixes a sum of Rs.10,000/- as notional income. It is also seen that there were six claimants in the claim petition, hence $\frac{1}{4}$ th of the income is deducted for his personal expenses. By adding 40% towards future prospects, notional income works out at Rs.10,500/-. By applying multiplier '17', this Court awards Rs.21,42,000/- (10,500 x 12 x 17) towards loss of dependency. As per the decision of the Hon'ble Apex Court in the case of Magma General Insurance Co. Ltd., vs. Nanu Ram and others reported in 2018(1) TN MAC 452



(SC), the claimants are entitled to Rs.40,000/- each towards consortium, which comes to Rs.2,40,000/-. Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses. Rs.3000/- is awarded towards damage of articles. In total, this Court awards Rs.24,15,000/-.

8. In the result, this Civil Miscellaneous Appeal is allowed. The second respondent/Insurance Company is directed to deposit a sum of Rs.24,15,000/- along with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellants 1 and 2/claimants 1 and 2/parents of the deceased, are entitled for a sum of Rs.1,50,000/- each; the 3rd appellant/3rd claimant/wife of the deceased is entitled for a sum of Rs.6,15,000/-; and the minor claimants 4 to 6/children of the deceased are entitled for a sum of Rs.5,00,000/- each together with proportionate interest and costs. The major claimants are permitted to withdraw their share after filing a memo, along with a copy of this order. Further, the Tribunal is directed to deposit the share of the minor claimants in any one of the nationalised banks, as fixed deposit under the Cumulative Deposit Scheme, till the minors attain the age of major and the third claimant, who is the guardian of the minor claimants, is permitted to withdraw interest once in six months directly from the bank. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

skn

To

The Motor Accidents Claims Tribunal,
Special Sub-Judge, Coimbatore.

Copy to

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

+1cc to Mr.R.Sreevidya, Advocate Sr.67846

+2cc to Mr.C.Thangaraju, Advocate Sr.67731

C.M.A.No.3051 of 2019

kv[co]

srg 11/02/2022