



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 04.03.2021
CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A (MD) No.1582 of 2010

1.Subbammal
2.Meenakshi
3.Vasantha
4.Muthusamy

.. Appellants/Petitioners 2 to 5

vs.

1.Managing Director,
Thiruvalluvar Transport Corporation,
Chennai - 2.

2.N.Krishnan

3.The Branch Manager,
The New India Assurance Company Ltd.,
Namakkal.

...Respondents/Respondents 1 to 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award passed in MCOP No.351 of 1998 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Pudukkottai, dated 16.03.2004.

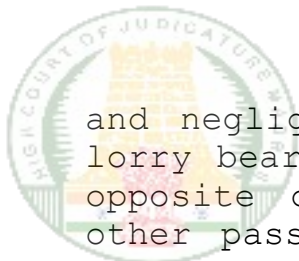
For Appellant : Mr.K.Baalasundaram

For Respondents : Mr.P.Prabakaran (for R1)
Mr.K.Elangovan (for R3)
R-2 Dismissed.

J U D G M E N T

This appeal is directed against the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Pudukkottai, in MCOP No.351 of 1998.

2.The claim petition in MCOP No.351 of 1998 was filed by the injured claimant Valarmathy. Pending claim petition, she passed away on 21.02.1999. Thereafter, her sisters and brother were impleaded as petitioners. It is the case of the claimants that the said Valarmathy and her brother's wife were returning from Chennai to her native place Aranthangi on 30.03.1997 in the first respondent's bus bearing registration No.TN-01-N-0839. When the bus was coming near Sepaukkam near Perambalur on Chennai-Trichy main road at 02.15 a.m, the driver of the bus drove it in a rash



and negligent manner and dashed against the second respondent's lorry bearing registration No.TMY 8179, which was coming from the opposite direction. In the accident, the said Valarmathy and other passengers sustained injuries. The said Valarmathy's teeth on the upper jaw and lower jaw were broken and the lower lip was also torn. After the accident, with the help of her brother's wife and other passengers, she travelled in another bus and reached her native place and thereafter, she had taken treatment at Aranthangi Government Hospital as inpatient for 14 days from 31.03.1997 to 12.04.1997. Due to the accident, she could not do her dhoby work as well as agricultural work. Subsequent to the filing of the claim petition, she died.

3.The third respondent Insurance Company resisted the claim disputing the age, income and avocation of the claimant. According to the third respondent, the driver of the first respondent's bus drove it in a rash and negligent manner and hence, the driver of the lorry was not responsible for the accident. Hence, the Insurance Company is not liable to pay any compensation. It is also stated that the claim was exorbitant and excessive.

4.The first respondent Transport Corporation also resisted the claim stating that since the claimant died in a natural death and not as a result of her injuries sustained in the said accident, the legal representatives are not entitled to claim compensation.

5.During the trial, the parties adduced oral and documentary evidence. On the side of the claimants, 2 witnesses were examined and 6 documents were marked. On the side of the respondents, driver of the bus alone was examined and no document was produced. After analyzing the evidence adduced by the parties, the Tribunal came to the conclusion that the accident had occurred due to the negligence of the driver of the first respondent bus. Since the claimant died a natural death, the Tribunal held that the claimants are not entitled to compensation and dismissed the claim petition. Challenging the same, the present appeal has been filed.

6.Mr.K.Balasundaram, learned counsel for the appellant would argue that the Tribunal failed to consider the evidence adduced in proper perspective and the Tribunal has erred in holding that the appellants 2 to 5 are not entitled to any compensation and the Tribunal erred in holding that the death was not due to accident. According to the learned counsel, in any event, the claimants are entitled to the medical expenses incurred on the original claimant.

7.Heard the learned counsels appearing on either side and perused the materials available on records.



8.In the matter on hand, it is not in dispute that the original claimant Valarmathy sustained injuries in an accident that took place on 30.03.1997. She filed the claim petition categorically stating that from 31.03.1997 to 12.04.1997, she took treatment as inpatient in Government Hospital, Aranthangi. Though it is further stated that from 13.04.1997, she was taking treatment in a private hospital as outpatient, she has not produced any documents in support of her claim.

9.It is relevant to note that she breathed her last only on 21.02.1999 i.e., after lapse of 2 years from the date of accident. It is well settled that it is for the claimant to prove that the death occurred on account of the injuries sustained in the accident. In the matter on hand, the claimants failed to produce medical records of the deceased for taking treatment till she died on 21.02.1999. Furthermore, it appears that the dead-body was not subjected to the postmortem and no postmortem certificate was produced before the Tribunal. The Tribunal based on the evidence of P.Ws.1 and 2 and Exs.P.2 and P.6, held that she did not die consequent to the injuries sustained in the accident.

10.It is not in dispute that in the case of injury and when the claimant dies during the pendency of the claim, the legal heirs are entitled for expenses including medical expenses. In the present case, though no medical records were produced to prove that the death happened due to the injuries sustained in the accident, considering the nature of the injuries sustained by the original claimant and also considering the fact that the original claimant was taking treatment for about two weeks, this Court awards Rs.20,000/- towards medical expenses.

11.In the result, this Civil Miscellaneous Appeal is allowed. The first respondent Transport Corporation is directed to deposit the award amount of Rs.20,000/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization. On such deposit, the claimants are permitted to withdraw the amount equally together with proportionate interest and costs. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal
Pudukkottai.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.ELANGOVAN, Advocate (SR-9080[F] dated 05/03/2021)

+1 CC to Mr.P.PRABHAKARAN, Advocate (SR-8783[F] dated
04/03/2021)

+1 CC to Mr.K.BAALASUNDHARAM, Advocate (SR-9373[F] dated
08/03/2021)

JUDGMENT MADE IN
C.M.A (MD) No.1582 of 2010
04.03.2021

KM(26.05.2021) 4P 7C