



WEB COPY

CMA(MD)No.180 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 10.03.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.180 of 2011

and

M.P(MD)No.1 of 2011

The Divisional Manager,
The New India Assurance Company Ltd.,
Kamarajar Salai,
Madurai - 625 009.

... Appellant/2nd Respondent

vs.

1.N.Nambathal

2.N.Nainammal

3.Muthulakshmi

4.N.Pothumponnu

5.Minor Panchavarnam

(Minor represented by her mother
and natural guardian the 1st respondent)
(R5 declared as major vide
Judgment dated 10.03.2021)

6.R.Gopalakrishnan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the order dated 20.07.2010 made in MCOP No.863 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge, Fast Track Court No.II) Madurai.

For Appellant	:	Mr.B.Vijayakarthiskeyan
For Respondents	:	No appearance



J U D G M E N T

This appeal is directed against the award passed by the Motor Accident Claims Tribunal (Additional District and Sessions Judge, Fast Track Court No.II) Madurai in MCOP No.863 of 2003.

2.The claim petition in MCOP No.863 of 2003 was filed by injured claimant Nalluchamy. Pending claim petition, he passed away on 29.08.2008. Thereafter, his wife and children were impleaded as petitioners. It is the case of the claimants that on 27.06.2002 at 05.30 p.m, the deceased Nalluchamy was returning in a bicycle after finishing his work at quarry in Melur - Thiruppathur main road on the extreme left side of the road. While so, a motorcycle bearing registration No.TN-59-P-2270, which was driven by its driver in a rash and negligent manner, hit against the bicycle. As a result of which, he sustained multiple injuries. Immediately, he was carried to a private hospital at Melur, where he took treatment from 27.06.2002 to 04.07.2002 as inpatient and thereafter, he was shifted to Government Hospital, Melur, where, he took treatment as inpatient from 05.07.2002 to 15.07.2002. According to the claimants, after discharge from the Government Hospital, he was taking treatment with Dr.K.S.Viswanathan, M.S., (Ortho) from 16.07.2002, but unfortunately, he died on 29.08.2008.

3.The appellant contested the claim by filing a counter disputing the averments made in the claim petition. It is further contended that the accident was not reported to the insurance company immediately and it was reported only after 8 days. Further, in the First Information Report, the offending vehicle number is mentioned as TN-59-L-7779 instead of TN-59-P-2270. The vehicle was also produced after lapse of 21 days and the death is not due to the injuries sustained in the accident and hence, no liability can be fastened on the insurance company.

4.During the trial, the parties adduced oral and documentary evidence. On the side of the claimants, 5 witnesses were examined and 8 documents were marked. On the side of the insurance company, two witnesses were examined and one 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 rider of the motorcycle bearing registration No.TN-59-P-2270 and hence, the claimants are entitled for compensation of Rs.2,18,000/-. Questioning the award, the present appeal has been filed.

5.Mr.B.Vijaykarthikeyan, learned counsel for the appellant would argue that the Tribunal failed to note that the accident had occurred as early as on 27.06.2002, whereas, the deceased died after lapse of 6 years i.e., on 29.08.2008. According to the learned counsel, no evidence was produced by the claimants to show that the



death occurred due to the injuries sustained in the accident. So, the claimants would be entitled only for medical expenses incurred on the original claimant and the other claims have to be rejected.

6. Heard the learned counsel for the appellant and perused the materials available on records.

7. In the matter on hand, it is not in dispute that the original claimant Nalluchamy sustained injuries in an accident that took place on 27.06.2002. He filed the claim petition categorically stating that from 27.06.2002 to 04.07.2002, he took treatment as inpatient in a private hospital at Melur and thereafter, he was shifted to the Government Hospital, Melur, in which, he took treatment from 05.07.2002 to 15.07.2002. Though it is further stated that from 16.07.2002, he was taking treatment with Dr.K.S.Viswanathan, he was not examined as witness in support of his claim.

8.It is relevant to note that he lost his breath only on 29.08.2008 i.e., after lapse of 6 years from the date of accident. It is well settled law that it is for the claimant to prove that the death occurred in view 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 he died on 29.08.2008. Furthermore, 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.4 and 5 and Exs.P.5 and P.6, held that he died on account of the injuries sustained in the accident. In the present case, admittedly, no medical records were produced to prove that the death happened due to the injuries sustained in the accident, so, the conclusion arrived at by the Tribunal based on the opinion given by the doctors cannot be countenanced, accordingly, it is hereby set aside.

9. It is well settled 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. The Tribunal has awarded Rs.20,000/- towards medical and other incidental expenses. Therefore, the claimants would be entitled only Rs.20,000/- together with interest at 9% per annum from the date of claim petition till the date of realization. Hence, the amount awarded by the Tribunal Rs.2,18,000/- is reduced to Rs.20,000/-.

10. The claim petition is of the year 2003 and at that relevant point of time, the 5th claimant was minor and by now, she should have been become major. So, she is declared as major and the Tribunal is hereby directed to disburse her share.

11. In the result, this Civil Miscellaneous Appeal is allowed.



It is represented by the learned counsel for the appellant that already entire award amount has been deposited. Hence, the claimants are permitted to withdraw the modified award amount equally together with proportionate interest and costs. The balance amount shall be refunded to the appellant / Insurance Company. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Additional District and Sessions Judge,
The Motor Accident Claims Tribunal
Fast Track Court No.II) Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2c)

+1cc to Mr.B.VIJAYAKARTHIKEYAN, ADVOCATE, SR NO.10238

C.M.A(MD) No.180 of 2011
and
M.P(MD) No.1 of 2011
10.03.2021

KK(19.05.2021) 4P 5C