



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2021

Pronounced on : 29.10.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A. (MD) .626 of 2020

WEB COPY

Meenakshi (Died)

1.Rakkammal

2.Annathai

3.Murugesan

: Appellants/Claimants

Vs.

1.R.V.S. College of Engineering and Technology,
Represented through the Chairman,
Having its Office at Karur Salai,
R.V.S.Nagar, Dindigul.

2.The Oriental Insurance Company Limited,
Represented through the Branch Manager,
Having its Office at D.No.,1,
Indian Life Building, Trichy Salai,
Coimbatore.

: Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order passed in M.C.O.P.No.267 of 2017, dated 23.01.2020 on the file of the Hon'ble Motor Accident Claims Tribunal, Special Subordinate Judge, Dindigul.

For Appellants : Mr.S.Pugalendhi

For Respondents : Mr.C.Karthik, for R2.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.267 of 2017, dated 23.01.2020 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge, Dindigul.

2.Originally, the first petitioner Meenakshi has filed the claim petition, claiming compensation for the injuries suffered and the consequent disabilities sustained by her in an accident occurred on 17.04.2017. Pending claim petition, the first petitioner died on 25.05.2017. The legal representatives of the deceased first petitioner have got themselves impleaded as the petitioners 2 to 4 and claimed compensation for the death of their mother/the first petitioner. Admittedly, the petitioners 2 and 3 are the daughters and the fourth petitioner is the son of the deceased first petitioner.



3.The case of the claimants is that on 17.04.2017 at about 04.00 pm, when the first petitioner was waiting in the R.V.S.College Bus Stop near Chokkampatti diversion, a vehicle owned by the first respondent College bearing registration No. TN 57AF 8029 came in rash and negligent manner in Dindigul to Karur Road and suddenly turned towards right side and dashed against the first petitioner, that the first petitioner had sustained fractures in her leg, right ankle and injuries all over her body, that she was immediately taken to Government Head Quarters Hospital Dindigul and thereafter, she was admitted in the City Hospital, Dindigul and subsequently, the first petitioner succumbed to the injuries on 25.05.2017 and that the accident was occurred only due to the rash and negligent driving of the driver of the first respondent.

4.The second respondent insurer has disputed the mode of accident and taken a stand that the first petitioner had suddenly crossed the road from west to east, that the driver of the first respondent's vehicle, on seeing the 1st petitioner, sounded horn and almost stopped the vehicle, but before that the petitioner came into contact with the van and sustained injuries and that the accident was occurred only due to the negligence of the first petitioner and the driver of the first respondent's vehicle was not at fault.

5.During enquiry, the claimants had examined the fourth petitioner Murugesan as P.W.1 and three other witnesses as P.W.2 to P.W.4, respectively and exhibited nine documents as Ex.P.1 to Ex.P.9. The claimants have also summoned the Medical Records from the City Hospital, Dindigul and exhibited the same as Ex.X.1. The second respondent insurer has adduced neither oral nor documentary evidence.

6.The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned award, dated 23.01.2020, holding that the accident was occurred only due to the rash and negligent driving of the first respondent's vehicle driver and mulcted liability on the second respondent/insurer to pay compensation of Rs.97,241/- for the medical expenses, attending charges and under other conventional heads.

7.The Tribunal, for the claim of the petitioners 2 to 4 for the death of their mother first petitioner, has held that the claimants have failed to prove that there was nexus between the death of the first petitioner and the injuries suffered by her in the accident. Aggrieved by the said findings of the Tribunal, the claimants have preferred the present appeal.

8.It is pertinent to mention that admittedly, the second respondent has neither filed any appeal nor raised any objection, challenging the finding of the Tribunal that the driver of the first respondent's vehicle was responsible for the accident and



consequently, mulcting liability on the second respondent/insurer. Moreover, the second respondent has also not challenged the quantum of compensation awarded for the medical expenses and the amounts under the incidental heads totally at Rs.97,241/-.

9.The points for consideration are :

(i) Whether the Tribunal erred in deciding that there was no nexus between the injuries suffered by the first petitioner and her death, despite producing the evidence to show that the first petitioner had died due to the accidental injuries and that the first petitioner had succumbed to the injuries on 25.05.2017, after the accident was occurred on 17.04.2017 and was discharged from hospital on 08.05.2017 ?

(ii) Whether the Tribunal erred in rejecting the claim of compensation for the death of the first petitioner to the claimants, who are her daughters and son ?

(iii) Whether the claimants are entitled to get compensation for the death of their mother ? If so, what amount ?

10. Admittedly, the accident was occurred on 17.04.2017. It is not in dispute that after the accident, she was immediately taken to Government Head Quarters Hospital, Dindigul and after first aid treatment, she was shifted to City Hospital, Dindigul, that she was taking inpatient treatment from 17.04.2017 till 08.05.2017 and that subsequently, she had died on 25.05.2017.

11. It is the specific case of the claimants that her left leg below knee was amputated, that she got infection and perforation and consequently, died on 25.05.2017. The claimants have summoned and examined the Medical Officer, who had treated her at City Hospital, Dindigul as P.W.2. P.W.2/ Medical Officer in his evidence would say that there were bone injuries in her legs, that since there was no blood circulation, the leg below the knee was amputated and that she was in good health at the time of discharge. He would also admit that since the injured person is aged and due to the resultant effects of the accidental injuries, there is a possibility for her death. In cross examination, he would say that after treatment, she was discharged on 08.05.2017, that there was no records available in their hospital to show that the first petitioner was treated after 08.05.2017 and that he was not aware about the condition of the first petitioner as per the available records. The claimants have also summoned the medical records from the City Hospital, Dindigul and exhibited the same as Ex.X.1.

12. Admittedly, post-mortem was not conducted on the body of the deceased first petitioner. The Tribunal, by observing that since post-mortem was not conducted and as there was no evidence to show



that the first petitioner was discharged when she was in a fit condition for discharge, has come to a conclusion that the death of the first petitioner was not due to the injuries sustained by her in the accident. At this juncture, it is necessary to refer the decisions relied on the learned counsel for the claimants :

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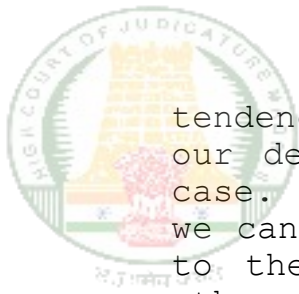
(i) **A.Muthu (since deceased) and others Vs. V.N.S.Sethu (since deceased) and others (CMA.No.2908 of 2019, dated 27.09.2013)**

"17.On verifying the factual position of the case and arguments advanced by the leaned counsels on either side and on perusing the documents marked by the claimants, it is evident that the claimant had sustained skull injury and that he had undergone treatment at Government Hospital and subsequently at A.G.Hospital, wherein he was admitted on 22.07.2003 for further medical treatment. Further, as per medical records, it is seen that the injured claimant underwent treatment as an inpatient for one month at Royapettah Hospital. As per Ex.P9, medical discharge summary, it is seen that the injured was given continuous medical treatment and the records reveal that the injured had developed traumatic complications. Considering this aspect, it is probable that the injuries sustained by him had led to his death. Therefore, this Court treats the case as a fatal case in order to meet the ends of justice and directs the second respondent Insurance Company to deposit the appeal value amount i.e., a sum of Rs.3,70,000/- as compensation to the claimants, to the credit of M.C.O.P.No.3666 of 2001, on the file of the Motor Accident Claims Tribunal, Fast Track Court No.V, Chennai, within a period of four weeks, from the date of receipt of a copy of this Order, as it is found to be appropriate in the instant case. This amount will carry interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation."

(ii) **2012 (7) MLJ 357:**

New India Assurance Limited Vs. R.Shanthi and others,

"9.The contents of Ex.P.1-FIR would reveal that Sankaran on that day, sustained head injury. The evidence of P.W.2 also supports this. A reading of evidence of R.W.1 Dr.Srinivasan shows that Sankaran was already a diabetic and an heart patient. It is not that the deceased in a road accident should not have any prior ailments. In a road, persons with all sorts of ailments are also expected. Of course, there was about one month delay in lodging the FIR. There is explanation for this delay in the FIR itself. Immediately, after knowing the death of Sankaran, his relative Devamani, after giving an undertaking letter, took the dead body, without conducting Post-mortem. Thereafter only the F.I.R. was given. It is a fact that there is a



tendency among us to avoid subjecting of the dead body of our dear and near one to post-mortem. It may be one such case. But, merely on account of not conducting post-mortem, we cannot jump to the conclusion that his death was not due to the road accident injury. It can be decided based on other relevant materials produced before the Court.

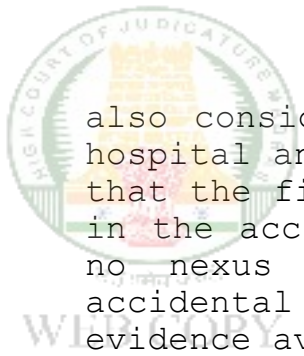
10. In Ex.P.1 F.I.R. there is mention about Sankaran having sustained head injury in a road accident. So also is the evidence of P.W.2. From the evidence of R.W.1, we can see that Sankaran was found with head injury at the time of his admission in the hospital. Ex.P.4 discharge summary also contains information to that effect. It is clearly stated that his death was also due to the head injury. Of course, in Ex.P.4 and in the evidence of R.W.1, it is stated that Sankaran himself came walking and got admitted in the hospital. Sometimes persons sustaining head injury may not lose their consciousness immediately. Sometimes, at the initial stage, in spite of the head injury, a person might be able to walk and the complications may develop later. It all depends on the facts and circumstances of each case. The evidence on record clearly shows that the deceased died due to the head injury sustained by him in the road accident."

13. Considering the above, it is very much clear that merely because post-mortem was not conducted, it cannot be said that the death was not due to the road accident injury and that the said aspect can only be decided based on other relevant materials produced before the Court.

14. In the case on hand, as already pointed out, the age of the first petitioner was shown as 65 years in the claim petition, but P.W.1 in his evidence would admit that his mother was aged about 70 years at the time of accident. It is evident from Discharge summary/Ex.P.2 and wound certificate/Ex.P.3 that the first petitioner's age is shown as 65 years. But in the amended claim petition, the age of the second petitioner, daughter of the first petitioner is shown as 61 years. Considering the above, the age of the first petitioner can be taken as 70 years at the time accident.

15. It is not the case of the second respondent that the first petitioner was having any other health issue or disease at the time of accident. As rightly contended by the learned counsel for the claimants, the Medical Records does not say anything that the deceased was suffering from any other disease or any other health issue at the time of taking inpatient treatment.

16. It is also not the case of the second respondent that the first petitioner had died only due to some other disease or some other health issue and not due to the accidental injuries. Considering the age of the first petitioner, the injuries suffered



also considering the period between the date of discharge from the hospital and the date of death, this Court has no hesitation to hold that the first petitioner had died only due to the injuries suffered in the accident. Hence, the finding of the Tribunal that there was no nexus between the death of the first petitioner and the accidental injuries is not proper and is not in consonance with the evidence available and as such, the same is liable to be set aside.

17.This Court has already fixed the age of the deceased as 70 years. It is pertinent to note that the claimants have not even stated in their claim petition, that the deceased was doing some kind of work and was earning. In **Veerammal and others Vs. The Managing Director, Tamil Nadu Transport Corporation (CMA(MD)No.1367 of 2012, dated 12.04.2018)**, this Court, for the accident occurred prior to 2008, has fixed the monthly income of a deceased person aged about 70 years at Rs.4,500/-.

18.Considering the fact that the accident in the present case was occurred on 17.04.2017 and the first petitioner had died on 25.05.2017, taking in to account the age of the deceased, this Court fixes the monthly income of the deceased at Rs.6,000/-. As per the legal dictum laid down by the Hon'ble Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, 1/3 income is to be deducted towards personal expenses of the deceased and the appropriate multiplier would be 5. Hence, the loss of dependency is computed at Rs.2,40,000/- [6000x2/3x12x5]

19.Our Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, the Hon'ble Supreme Court in **Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others** reported in **(2018) 18 SCC 130**, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. Honourable Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, Hon'ble Apex Court in **The New India Assurance Company Ltd. Vs. Smt.Somwati and others**, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in **Pranay Sethi's** case.

20.Considering the above, the claimants are entitled to get Rs.40,000/- each towards parental consortium and they are entitled to get Rs.81,241/- towards medical expenses; Rs.15,000/- towards



funeral expenses and Rs.15,000/- towards loss of estate, totally at Rs.4,71,241/- and the above points are answered accordingly.

21. In the result, the Civil Miscellaneous Appeal is allowed and the compensation amount is enhanced from Rs.97,421/- to Rs.4,71,241/- with interest at 7.5% per annum. Out of the said compensation amount, the claimants 2 and 3/daughters of the deceased are entitled to get Rs.1,57,000/-each and the fourth claimant/ son of the deceased is entitled to get the remaining amount of Rs.1,57,241/-. The second respondent/Insurer is directed to deposit the modified/enhanced award amount, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order and on such deposit, the claimants are permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. The parties are directed to bear their own costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar (CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Motor Accident Claims Tribunal,
Special Subordinate Judge, Dindigul.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

order made in
CM.A. (MD) .626 of 2020
29.10.2021

SR (CO)

GC (09.12.2021) 7P 4C

<https://hcservices.ecourts.gov.in/hcservices/>