



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 14.09.2021

Delivered On : 09.11.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.695 of 2014

1. Shanmuganathan (Died)

2. Guruvu

.. Appellants 1&2/Claimants

(cause title accepted vide order dated 01.04.2013

and made in M.P.No 1 of 2013 in C.M.A.(MD)No.SR3867 of 2013
by GMAJ)

(2nd Appellant is brought on record as legal heirs of the
deceased

sole appellant vide Court order dated 09.12.2016 made in
C.M.P.(MD)Nos.11191 to 11193 of 2016
in C.M.A.(MD)No.695 of 2014 by NKKJ)

Vs.

1. K. Velu

2. Bombay Goods Transport Carriage,
Solinkar Road,
Kumbilikottai,
Arakkonam Taluk,
Vellore District.

.. Respondents 1&2/Respondents 1&2

(no notice required for respondents 1 and 2, since
they are set ex parte before the trial Court)

3. The New India Insurance Company Ltd.,
V.T.B. Complex, 1st Floor,
Gandhi Road, Arakkonam - 88,
Vellore District - 631001.

.. Respondents No.3/Respondents No.3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173
of Motor Vehicles Act, 1988, to set aside the fair and decretal
order passed by the Motor Vehicle Accident Claims Tribunal,
Subordinate Judge, Sankarankovil in M.C.O.P.No.88 of 2002 dated



For Appellant : Mr.M.Jothi Basu
For 3rd Respondent : Mr.D.Siva Raman
For Respondents 1 and 2 : Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.88 of 2002 dated 26.02.2007, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Sankarankovil.

2.The first appellant herein is the claimant and the respondents herein are the respondents in the claim petition. The first appellant herein died and the second appellant herein is the legal heir of the first appellant herein. The first appellant herein has filed a claim petition in M.C.O.P.No.88 of 2002, claiming compensation for the injuries sustained by him, in an accident that took place on 27.07.2002. The Tribunal has awarded a sum of Rs.78,800/- (Rupees Seventy Eight Thousand and Eight Hundred only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.88 of 2002 is as follows:

On 27.07.2002, at about 12 noon, while the petitioner and his father Gurusamy were walking along the road, the first respondent drove a lorry bearing registration No.TN-23-Q-8092 in a rash and negligent manner and dashed against the petitioner. The petitioner sustained injuries and he was admitted in Sivagiri Government Hospital. The petitioner was doing sixth standard at the time of accident. Both his legs were injured due to the accident. The petitioner claimed a sum of Rs.7,00,000/- as compensation.

4.A brief substance of the counter filed by the third respondent therein is as follows:

The accident took place due to the negligence of the petitioner himself. The first respondent is not responsible for the accident. The petitioner has not sustained any disability. The first respondent was not having valid driving licence at the time of accident. The policy conditions are violated. Hence, the third respondent is not liable to pay any compensation.

5.The respondents 1 and 2 remain exparte. On the side of the claimant, two witnesses were examined and eight documents were marked. On the side of the third respondent, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.78,800/- (Rupees Seventy Eight Thousand and Eight Hundred only) as compensation. Against which, the appellant has preferred this Civil Miscellaneous Appeal for enhancement of



6.On the side of the appellants, it is stated that the Tribunal has failed to note the injuries sustained by the petitioner. During the treatment, the right leg above the knee was amputated. The permanent disability was not taken into consideration by the Tribunal. Due to the accident, the appellant was not able to continue his studies. P.W.2 assessed the disability at 90%. The disability certificate was marked as Ex.P8. But the Tribunal reduced the disability as 30%. The appellant took treatment for a period of 2 ½ months in the Government Hospital, Sivagiri. But the Tribunal failed to award compensation for attendant charges. The Tribunal has awarded only Rs.5,000/- towards pain and sufferings in the case of amputation. The injury will affect the future studies, professional opportunity and marital prospects of the petitioner. The Tribunal failed to adopt multiplier method. Atleast Rs.2,000/- per percentage of the disability for 90% disability is to be awarded. Even the day to day, life of the petitioner is affected.

7.On the side of the appellants, it is stated that the first appellant is only a washerman. Subsequent to the filing of the appeal, the first appellant could not balance himself and he fell into the river water and died. The father of the first appellant is also dead. The mother of the first appellant was impleaded as the second appellant.

8.On the side of the third respondent, it is stated that the claim was made by the minor represented by the father. By the year 2012, the first appellant attained majority. The first appellant died due to drowning in the water and the death is not due to the accident. The mother cannot continue the appeal for enhancement. Personal rights dies with the person. Only the actual expenditure can be given to the mother. The mother is not entitled for pain and sufferings or for loss of estate. In support of his contention, a judgment of the Karnataka High Court in the case of **Kannamma v. Deputy General Manager** reported in **1991 ACC 421**, wherein it is stated as follows:

"It can, therefore, be concluded that a person's claim for compensation for personal injuries under the head loss to his/her estate, can, on his/her death as a consequence of such injuries, be prosecuted by his/her legal representatives, if they do not include a claim for compensation under that head, as and when they file a claim petition under Clause (b) of Sub-section (1) of Section 110A of the Act, on the death of the person injured.

12.In the result, the Full Bench answers the

<https://hcservices.ecourt.gov.in/hcservices/> referred for its decision by the Division



Bench, thus:

(i) A claim petition presented under Section 110A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc., (loss of estate) cannot, on such person's death occurring not as a result or consequence of bodily injuries sustained from a motor accident, be prosecuted by his/her legal representative; but"

9. The learned counsel for the third respondent would rely upon the judgment passed by this Court in the case of **Managing Director, Dheeran Chinnamalai Transport Corporation v. Padmavathi** in **C.M.A.No.1218 of 2018**, wherein it is stated as follows:

"11. Hence, I hold on the point that the award of compensation given by the learned Tribunal in M.C.O.P.No.314 of 1995, dated 30.04.1997, under the head pain and sufferings, is not sustainable for the reasons stated in the Memorandum of appeal in C.M.A.No.1218 of 1997. The point is answered accordingly."

10. It is seen that the first appellant died, during the pendency of the appeal. The original claim petition was made only by the first appellant. The second appellant was subsequently impleaded as the legal heir of the first appellant. Though the death of the first appellant was not due to the direct impact of the accident, the situation for the death is that due to the lack of balance in one leg, the first appellant drowned into the water. In the above circumstances, the citations filed by the third respondent is not applicable to the present facts of the case.

11. On the side of the appellants, it is stated that the Tribunal has awarded only Rs.64,800/- towards loss of income, for 90% of the disability, which is very low. It is seen that the Tribunal has assessed the disability as 30%. No reason is discussed by the Tribunal in fixing the disability. Considering that the right leg of the first appellant was amputated, the disability is fixed at 90%. For 90% disability, loss of income, is calculated as Rs.3,000/- per month and by applying multiplier '15' (3000x12x15x90/100), the claimant is entitled to Rs.4,86,000/- (Rupees Four Lakhs Eighty Six Thousand and Six Hundred only). The second appellant is not entitled for receiving any amount for pain and sufferings undergone by the first appellant. The Tribunal has awarded Rs.5,000/- (Rupees Five Thousand only) towards extra nourishment, Rs.3,000/- (Rupees Three Thousand only) towards transportation expenses and Rs.1,000/- (Rupees One Thousand only)



to damages to clothing and articles and the same is reasonable. Since the first appellant was then a minor, these expenses must be incurred by the second appellant. The first appellant was under treatment for a period of 2 ½ months in the Government hospital, Sivagiri and that the second appellant is entitled for Rs.25,000/- (Rupees Twenty Five Thousand only) towards attendant charges. In total, a sum of Rs.5,20,000/- (Rupees Five Lakhs Twenty Thousand only) is awarded as compensation.

12.In the result, this Civil Miscellenaous Appeal is partly allowed. The second appellant is entitled to a sum of Rs.5,20,000/- (Rupees Five Lakhs Twenty Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

13.The respondents herein are directed to deposit Rs.5,20,000/- (Rupees Five Lakhs Twenty Thousand only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the second appellant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by her earlier. Excess amount, if any deposited shall be refunded to the respondents herein. The second appellant is not entitled for interest for the default period, if there is any. No Costs. The second appellant is directed to pay extra Court fee, if any is needed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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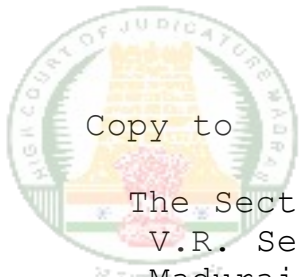
Sub Assistant Registrar(CS)

MRN

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

1.The Motor Accidents Claims Tribunal,
Subordinate Judge,
Sankarankovil.



Copy to

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.JOTHIBASU, Advocate (SR-33747[F] dated
09/11/2021)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-33808[F] dated
09/11/2021)

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RK/NS (24/11/2021) 6P 6C