



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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|----------------------------|-------------------|
| <b>Date of Reservation</b> | <b>18.01.2021</b> |
| <b>Date of Judgment</b>    | <b>29.01.2021</b> |

WEB COPY

**CORAM:**

**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

**C.M.A(MD)No.727 of 2016**

**and**

**CMP(MD)No.7289 of 2016**

Tamil Nadu State Transport Corporation  
(Kumbakonam) Limited,  
represented by its Managing Director,  
Periyamilaguparai,  
Tiruchirappalli.

: Appellant/ Respondent

Vs.

M.Appa Naicker(Died)

1.Machammal  
2.S.Muthulakshmi  
3.A.Murugesan

: Respondents/Petitioners

**PRAYER:** Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 17.08.2015 made in MCOP No.70 of 2013 on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Karur.

For Appellant : Mr.P.Prabhakaran

For Respondents : Mr.V.Balaji

**JUDGMENT**

**(Thro' VC)**

Challenge made in this appeal is to the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Karur, in MCOP No.70 of 2013, dated 17.08.2015.

2.The brief facts of the case are that on 12.11.2012 at about 4.40 pm, when the deceased Appa Naicker returning to his house in his two wheeler TN-47-AA-6574 after finishing his work , nearing Sakthi Arts College at Kodangipatty, the bus TN-45-N-2485 belonging to the appellant Transport Corporation hit against the



two wheeler. In that process, the deceased sustained grievous injuries all over the body and subsequently, in spite of treatment, he died. The claimant, being the legal heirs of the deceased sought compensation of Rs.5,00,000/- on the ground that the driver of the offending vehicle was responsible for the accident.

3.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.3,56,000/- together with interest @ 7.5% p.a. Challenging the award of the tribunal, the Insurance Company as appellant is before this court.

4.Heard both sides and perused the materials available on record.

5.The learned counsel appearing for the appellant/respondent argued that there is no proof that the injured died consequent upon the injuries sustained by him in the accident and therefore, the tribunal cannot award compensation based on the death of the injured and there is no record showing that the legal heirs of the deceased have converted the claim for injury to the claim for death and the tribunal cannot *suo moto* come to the conclusion that the injured claimant died consequent upon the injuries sustained by him and no postmortem certificate was produced showing that the injured died only consequent upon the injuries sustained by him and only the claimants are entitled to medical expenses incurred by the deceased and prays that the civil miscellaneous appeal has to be allowed. For the above proposition, the learned counsel appearing for the appellant submitted a ruling reported in **2000 (IV) CTC 528 (The Managing Director, Pandiyan Roadways Corporation, Madurai Vs. S.Rajalakshmi and 4 others)**, wherein this court had held in para 9 as follows:-

"In this context, I have also considered the judgment of the Supreme Court reported in *Melapurath Sankunni Ezhuthassan Vs. Thekittil Gopalankutty Nair*, 1986(1) S.C.C 118 and *M.Veerappa Vs. Evelyn Segulira*, 1988(1) S.C.C. 556. A Division Bench of this court has also held in *C.P.Kandaswamy Vs. Mariappa Stores*, 1974 A.C.J 362, that in the case of an injured claimant the cause of action will not survive in respect of the legal representatives of the claimant. In all the above decisions, the Division Bench as well as the Supreme Court had taken note of Section 306 of the Indian Succession Act and have held that claim for



compensation in respect of personal injuries will not be available for the legal representatives provided the death was not caused as a result of the accident. The Supreme Court has also pointed out that the position would be different if the suit for damages had resulted in a decree in favour of the plaintiff in which case the decree amount would form part of the estate of the deceased to which the legal representatives would be entitled to. But where no such decree has been passed, the legal representatives of the claimant will not be entitled to compensation due towards personal injuries are concerned."

6. But on the other hand, the learned counsel appearing for the respondents/claimants argued that due to the accident, the deceased sustained injuries on chest, rib and the lungs were affected and further found multiple injuries all over the body and the injured took treatment as inpatient in Karur and then took treatment in the private hospital as inpatient in Coimbatore and subsequently, the injured died due to the injuries sustained by him in the accident and non-conduct of postmortem will not shatter medical evidence particularly in absence of contra medical evidence on the side of appellant would show that the injured died due to the injuries sustained in the accident, but there was no contra evidence let in on the side of the appellant/respondent to prove that the injured was died not due to the accident and in this case, the injured died due to the injuries sustained in the accident and hence, the appellant/respondent is liable to pay compensation to the claimants. For that, the learned counsel appearing for the respondent relied up the judgment reported in **2009(1) TNMAC 465 (Oriental Insurance Company Limited, rep. by its Divisional Manager, Chennai Vs. N.Meenal and others)**.

7. The dispute in this appeal is with regard to quantum of compensation awarded by the tribunal. In this case, the deceased died to the injuries sustained in the accident. To prove it, on the side of the claimants, Ex.P2 Wound Certificate was filed before the tribunal. On perusal of Ex.P2, it is stated that due to the accident, the deceased sustained injuries on his head, chest and he was under treatment. But to disprove it, no document was filed on the side of the appellant/respondent that the injured was not died to the injuries sustained by him in the accident. As per Ex.P2 Wound Certificate, the injured undertook treatment for the injuries sustained by him. No contra evidence was let in on the side of the appellant/respondent to prove that the injured was not died due to the injuries sustained in the accident. It is, therefore, held that the injured died only due to the injuries sustained by him in the alleged accident. Hence, the argument put



forth on the side of the appellant/respondent stating that the claimants failed to prove the death of the injured was not due to the injuries sustained in the accident and therefore, the claimants are entitled only for medical expenses incurred by the injured is not at all acceptable. Further, the tribunal has correctly arrived the loss of income of the deceased and awarded compensation, which according to this court is not necessary to interfere with the findings given by the tribunal.

8.In fine, the civil miscellaneous appeal is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

To

The Chief Judicial Magistrate,  
Motor Accident Claims Tribunal,  
Karur.

Copy to

The Section Officer, VR Section-2 copies  
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.P.PRABHAKARAN, Advocate ( SR-2449[F] dated  
29/01/2021 )

C.M.A (MD) No.727 of 2016  
29.01.2021

KM (18.02.2021) 4P 5C