



CMA.1312 of 2006

C.M.P.No.1370 of 2007
in
C.M.A.No.1312 of 2006

RESERVED ON : 09.02.2022	PRONOUNCED ON : 23.06.2022
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J. NISHA BANU, J.

Earlier on 07.09.2006, this court heard the entire submissions made by the learned counsel for the appellant and for respondents 1 to 3 and disposed of the appeal, by order dated 07.09.2006. Thereafter, appellant/Insurance company has filed CMP.No.1370 of 2007 praying to modify the decree and judgment dated 07.09.2006 in CMA.No.1312 of 2006. This court, taken up CMP.No.1370 of 2007, heard the arguments of learned counsel for the appellant and the following order is passed.

2. The main ground raised in the CMA before the learned Judge was that there was no conclusive proof that the death caused on 20.05.2001 was due to the injuries sustained in the accident which occurred on 22.09.2000. The learned Judge elaborately discussed the issues and held that the tribunal based upon evidence of P.Ws.3 and 4 and the medical certificate issued by the Ramakrishna Hospital, Coimbatore, came to the conclusion that the deceased



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died due to the injuries sustained on 22.09.2000. The learned Judge, after discussing elaborately regarding the evidence of P.W.1 and the medical evidence of doctors ie., P.Ws 3 and 4 , discharge summaries-Ex.P.8 to Ex.P.12, held that all these conclusively prove that the death was caused only due to the injuries sustained by the deceased in the accident. It was also pointed out that from the nature of injuries and the long period of treatment, it can safely be concluded that the death caused on 20.05.2001 was only due to the injuries sustained by him in the accident. Thereby, this court held that the contention of the learned counsel for the appellant that there was no conclusive proof, has to be rejected.

3. As far as liability is concerned, the learned Judge confirmed the finding of the Tribunal that Insurance company is liable to pay the compensation.

4. As far as quantum of compensation is concerned, the learned Judge pointed out that the tribunal's deduction of 1/3rd is not permissible; apart from pecuniary damages, a further sum of Rs.3,45,000/- has to be awarded as compensation. The learned Judge also held that even though the just compensation payable to the claimants would be Rs.10,65,000/-, taking note of



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settled decisions of Division Bench judgments of this court and that the claimants claimed only a sum of Rs.10,00,000/-, awarded Rs.10,00,000/- with 7.5% interest per annum [enhanced from Rs.7,93,000/- to Rs.10,00,000/-].

5. After the disposal of the above CMA on 07.09.2006, CMP.No.1370 of 2007 has been filed by the appellant/Insurance company praying to modify the decree and judgment dated 07.09.2006 and the same has been filed before this court on 10.04.2007. Therefore, this court directed the registry to post the CMA for hearing and for orders once again.

6. The only fresh ground taken in CMP.No.1370 of 2007 is that the Honourable Supreme Court in the judgment reported in 2006 ACJ 1398 (SC) held that in the absence of appeal filed by the claimants and in the absence of any cross objection in the appeal filed by the Insurance Company, the High Court cannot increase the quantum beyond the amount awarded by the Tribunal.

7. But it is settled principle of law that even where the cross objection is not filed, in appropriate case, the principle laid down under Order 41 Rule 33 of CPC can be invoked. **Order 41 Rule 33**, CPC reads as under:



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“The appellate court shall have power to pass any decree and make any **order** which ought to have been passed or made and to pass or make such further or other decree or **order** as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have tiled any appeal or cross-suits or where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees.”

Further, in the present case, the Tribunal has observed that the entire compensation amount is to be paid by the Insurance Company, so obviously, if there would be any enhancement, such amount has to be paid by the insurance company and not by the owner and ultimately it is the insurance company which would be made liable. Under the provision of Order 41 Rule 33 of CPC, the appellate court can make appropriate order to do complete justice between the parties and to decide the matter in a way that the claimant is given just compensation.

8. It is also relevant to point out that the claimants claimed Rs.10,00,000/- before the Tribunal. The insurance company has challenged the



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award of compensation of Rs.7,93,000/- including interest in the present appeal.

9. In conclusion, to meet the ends of justice, it is relevant to point out herein that the court should not refuse to exercise its discretion on mere technicalities. On the other hand proper exercise of judicial discretion to determine and render complete justice between the parties is paramount. The parties before the Tribunal are before the appellate court. Therefore, the appellate court could pass such decree or order as the case may require. Therefore, on 07.09.2006 this court heard the entire submissions made by the appellant and Respondents 1 to 3 and passed the order. The aforesaid observations make it clear that the ratio of judgment cited by the learned counsel for the appellant cannot be applied to the present case on hand.

10. The claim petition is of the year 2001. The injured had originally filed MCOP for the accident that occurred on 22.09.2000, but due to the injuries sustained in the accident and after prolonged treatment, he died on 20.05.2001. The award was passed by the Tribunal on 05/11/2003. The tribunal conclusively held that the death is due to accidental injuries. This court



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also approved the view of the Tribunal and finding that the sole bread winner of the family died in the accident and also the fact that the injured has been given treatment from 22.09.2000 and without any improvement, he died on 20.05.2001 and the legal heirs of the deceased are entitled to just compensation of Rs.10,65,000/-. The said compensation has been arrived by applying correct multiplier and deduction method. Further, the learned Judge in the order dated 07.09.2006 also pointed out that the claim was only a sum of Rs.10,00,000/- before the Tribunal, so, the respondents 1 to 3/claimants are entitled to get a compensation of Rs.10,00,000/- alone with 7.5% interest per annum.

11. In the result, this CMP is dismissed. The judgment and decree of this court dated 07.09.2006 holds good. No costs.

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Internet :Yes/No

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To

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- 1.The Judge, MACT (Small Causes Court No.III) Chennai.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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