



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

C.M.A.No.572 of 2022

1.M.Gurusev (Died)

2.G.Susila

3.G.Kalaivani

4.G.Kanimozhi

(As per order passed in I.A.No.812/2018

dated 26.07.2018 the petitioners 2 to 4

are impleaded as LRs of 1st

Petitioner)

...Appellants/Petitioners

Vs

1.S.Balakrishnan

2.The United India Insurance Co. Ltd.,

Having its office at

No.48, Arcot Road, Saligramam,

Chennai - 600 093.

...Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 29.11.2021 made in M.C.O.P.No.680 of 2013 on the file of Motor Accident Claims Tribunal, (II Additional District and Sessions Court), Tiruvallur at Poonamallee.

For Appellants

: Mr.K.Varadha Kamaraj

J U D G M E N T

The first Appellant had filed M.C.O.P.No.680 of 2013 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Tiruvallur at Poonamalle claiming compensation of a sum of Rs.7,90,000/- for the injuries sustained by the first appellant in a road accident on 11.06.2013.

2. By reason of the accident, the first appellant had sustained the following injuries:



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- i. Right Eye full damaged
- ii. Bone Fracture of Right hip
- iii. Bone Fracture of Right side head
- iv. Two teeth broken in upper side mouth
- v. Bone fracture of right orbit of root.

3. The first appellant's contention is that on 11.05.2013 at about 3.15 pm, when he was walking on the G.S.T. Road, crossing the road on the junction of the Thiruneermalai, Chennai from West to East, the first respondent's Mahindra Bollero Car, driven by its driver in a rash and negligent manner hit against the first appellant, causing grievous injuries to him including fractures. He therefore, filed the claim petition for compensation.

4. The first respondent remained exparte and the second respondent/ Insurance Company had filed a counter denying the accident, the liability of the first respondent and also questioning the quantum of compensation sought for.

5. The Motor Accident Claims Tribunal, Poonamalle by its order dated 29.11.2021 was pleased to allow the claim petition, granting compensation of a sum of Rs.11,000/- to the Appellants. The Tribunal below, relying on the cross examination of P.W.2, came to the conclusion that the cause of death was only on account of Tuberculosis. Further the accident had taken place on 11.06.2013 and the claimant had died on 07.08.2014 and therefore held that the death was totally unconnected to the injuries sustained by him in the accident. The Tribunal had, however, proceeded to award a sum of Rs.11,000/- for the period of his hospitalization from 03.06.2014 to 07.08.2014.

6. Aggrieved by the said order, the legal heirs of the sole claimant is before this Court.

7. Mr.K.Varadha Kamaraj, learned counsel for the Appellant would vehemently contend that the death was only a consequence of the injuries sustained by the sole claimant. It is his contention that prior to the accident, the first appellant had not suffered from tuberculosis disease and also he had suffered a loss of eye sight on account of his loosing immunity power on account of tuberculosis. He would also question the failure of the Tribunal to award compensation for pecuniary loss to the family as well as the other conventional heads.



8. Heard the learned counsel for the appellant arguing for an admission. Admittedly, the accident in which the deceased/ claimant had sustained injuries, took place on 11.06.2013. The deceased/ claimant had been admitted to the Chrompet Government Hospital and was discharged from the Government hospital.

9. The Tribunal below has held that the accident occurred on account of the rash and negligent driving of the first respondent's driver. However, the Tribunal had taken into account the evidence of P.W.2 - Doctor working in the Tambaram Government Hospital, who in his cross examination, had narrated the symptoms that the deceased/ claimant had suffered and had opined that the deceased/ claimant was a chronic alcoholic as well as a smoker, as a result of which, he had developed tuberculosis and his death is only on account of tuberculosis. This admission in cross would clearly prove that there is no nexus between the accident and the death.

10. In the light of such a categorical admission, which the appellants are not able to rebut or refute, the award passed by the Tribunal has to be sustained and accordingly the Civil Miscellaneous Appeal is dismissed. No Costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
II Additional District and Sessions Judge
Tiruvallur, Poonamallee.

2. The Section Officer, V.R.Section,
High Court, Madras.

+1 CC to MR.K.Varadha Kamaraj, Advocate sr 21138.

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GSM(CO)
SP(28/04/2022)