



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.No.2025 of 2018

and

CMP.No.15600 of 2018

1.Saroja

2.Natchimuthu

3.Muthusamy

4.Chinnaraj

5.Rukmani

...Claimants 2 to 7/Appellants

v.

1. Manikandan

2. Mayavan

3. The United India Insurance Company Ltd.,
144-B, Kalpana Road,
Udumalpet,
Tiruppur District.

...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree dated 01.02.2018 passed in MCOP No.100 of 2012 on the file of the Motor Accident Claims Tribunal, Udumalpet / the Sub Court, Udumalpet.

For Appellants : Mr.N.Umapathi

For R3 : Mr.I.Malar

JUDGMENT

The issues in the Civil Miscellaneous Appeal arise from the Claim Petition filed in MCOP No.100 of 2012 before the Motor Accident Claims Tribunal / Sub Court, Udumalpet. On 11.03.2012 at around 8.30 a.m when Rangammal, was going with her grandson, Natraayan, to a shop at Ellaimuthu and were standing near the footpath, an Omni van bearing registration No.TN-37-AQ-3760 had apparently come in a rash and negligent manner and had dashed against Rangammal causing grievous injuries. Owing to the said injuries, she had suffered fracture in both legs and also other injuries all over the body. Claiming compensation for the



injuries suffered, the Claim Petition had been filed in MCOP No.100 of 2012.

2.It must be noted that pending the Claim Petition, Rangammal had died and her legal representatives had been brought on record as 2nd to 6th claimants. Further the second claimant who was brought on record had also unfortunately died and his legal representatives had been impleaded as 3rd to 7th claimants.

3.The Claim Petition went through its normal process and during the course of trial, the 6th claimant was examined as PW-1 and 4th claimant was examined as PW-2 and the grandson who had accompanied Rangammal had been examined as PW-3. The Claimants also marked Exs.P1 to P19. Among these documents, the relevant documents would be a copy of the First Information Report which was marked as Ex.P1, the copy of the final report marked as Ex.P2, the accident register marked as Ex.P4, the Death Certificate of Rangammal marked as Ex.P6, the legal representative certificate marked as Ex.P7, the Death Certificate of the 2nd claimant marked as Ex.P8, the legal heirship certificate marked as Ex.P9. The other documents related to Aadhar Card and Bank Passbooks.

4.The respondent did not mark any documents and did not take up the opportunity to adduce evidence.

5.On the basis of the pleadings and the evidence presented, the Tribunal had proceeded to determine whether the accident occurred due to the rash and negligent driving of the Omni van bearing registration No.TN-37-AQ-3760 and had given a finding in the affirmative on that particular statement. Thereafter, it also proceeded to examine whether the claimants were entitled to receive compensation, particularly in view of the fact that the injured had died pending the proceedings and whether the 3rd respondent, the United India Insurance Company was under an obligation to indemnify for any compensation granted to the owner of the Omni van and thereafter, examined the quantum of compensation to be granted.

6.With respect to the 2nd and 3rd issues, the Tribunal had given a finding that since, medical bills had not been produced by the claimants for the treatment given to the injuries suffered by Rangammal, the legal representatives cannot maintain an application seeking compensation for injuries suffered since the said injuries had been personal in nature to Rangammal and if at all, any compensation is to be granted she alone would be entitled for such compensation and therefore, negated the issue of grant of compensation, and the entitlement to receive compensation. Consequently, it was held that there was no burden



7. It was also stated that in view of the aforementioned finding there is no necessity to determine the quantum of compensation which Rangammal might be entitled to receive owing to the injuries suffered.

9. It had been urged by the learned counsel, Mr. Umapathy, that the entire reasoning of the Tribunal has to be re-visited by this Court and it was also pointed out that even though injuries suffered might be personal in nature, the expenses incurred to the treatment of those injuries has to be granted and there must be compensation for the pain and suffering of the family members owing to the injuries caused to the another family members. It had therefore been urged that the judgment should be reversed.

11. The learned counsel for the respondent stated that relevancy of the medical bills will have to be tested and therefore stated that the issue of proof is a primary and it has to be established whether, particularly the medical bills relating to the period of hospitalization actually relate to the deceased Rangammal or not.

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



and finally, the reasoning of the Hon'ble Supreme Court had been crystallized in paragraphs 20 & 21 of the judgment, which are as follows:-

"20. We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's fees etc., including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased.

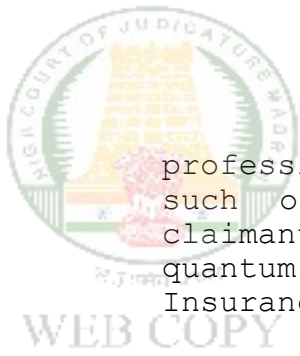
21. However, the compensation under the head pain and suffering being personal injuries is held to be unsustainable and is disallowed. The High court has not awarded anything toward medical expenses despite hospitalization for six months being an admitted fact. We therefore award a sum of Rs.1,00,000/- toward medical expenses."

13. It is thus seen that a pronouncement had been given by the Hon'ble Supreme Court that if the injured who unfortunately died pending litigation, the legal representatives would still be able to maintain the Claim Petition for compensation of loss of estate, which would include expenditure on medicines for treatment, for the additional nutritions given, for the expense incurred on the attendants and also for the doctor's fees. It was also stated that the income and future prospects would also have to be examined and necessary weightage will have to be given depending on the case.

14. These are all aspects will have to be revisited by the Tribunal. In view of the particular fact that the Tribunal had negatived the claim in entirety, I would set aside the said order in MCOP No.100 of 2012 dated 01.02.2018 and under Order 41 Rule 23-A of CPC direct that the trial to be conducted again.

15. The evidence already recorded may be retained, but further evidence may be recorded from anyone of the claimants and opportunity may be granted to lead evidence on the aspects stated above namely, expenditure on medicines, treatment, diet, professional fees and income and future prospects as held out by the Hon'ble Supreme Court, which are factors to be considered, even if the injured died pending litigation.

16. Naturally, directions will have to be given that further issues will have to be framed by the Tribunal namely, whether the Tribunal has to consider expenses of medicines, diet,



professional fees, including income and future prospects and such other aspects as compensation to be granted to the claimants and if so, the quantum of such compensation and if the quantum is arrived, whether the liability can be shifted to the Insurance Company to pay such compensation.

17.While deciding these issues, the Tribunal must keep in mind the issue already decided that the accident occurred only due to the rash and negligent manner in which the Omni van bearing Regn.No.TN-37-AQ-3760 had been driven.

18.With the above observations, the order of the Tribunal is set aside. The Civil Miscellaneous Petition is allowed and the Civil Miscellaneous Petition in CMP No.15600 of 2018 is also allowed, with a direction to take evidence on the documents now produced and on any other additional issue surrounding the aforementioned aspects mentioned above and in manner known to law.

19.Taking into consideration the trial process already done, the Motor Accident Claims Tribunal/Sub Court, Udumalpet, may devote some personal attention to record the evidence as directed and make an endeavour to dispose of the MCOP No.100 of 2012, on or before 30.09.2022.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

smv

To:-

1. The Motor Accident Claims Tribunal /
the Sub Court, Udumalpet.
2. The Section Officer,
VR Section, High Court
Madras.

+1cc to M/s.N.Umapathi, Advocate, S.R.No.25025

+1cc to I.Malar Ravichandran, Advocate, S.R.No.25557

CMA.No.2025 of 2018
and

CMP.No.15600 of 2018

AD(CO)
RGA(25/05/2022)