IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.3259 of 2021
and
C.M.P.No.18531 of 2021

HDFC ERGO General Insurance Company Ltd.,
6th Floor, Leela Business Park,
Andheri-Kurla Road,
Andheri (East), Mumbai – 400 059. ... Appellant

Vs.

Sugasini (died)

1.Dhanapal

2.Kamala

3.M/s.Praneel Carriers,
Owner of the Container Lorry,
Bearing Reg.No.TN-04-AF-7024
Old No.15, New No.27, Maracoir Street,
Mannady, Chennai – 600 001. ... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 09.07.2020 made in M.C.O.P.No.119 of 2015 on the file of the Motor Accident Claims Tribunal, Sub-ordinate Judge Court, Vaniyambadi.

For Appellant	:	Mr.N.Somasundar
For Respondents	:	Mr.M.Malar for R1 and R2.

J U D G M E N T

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

This Civil Miscellaneous Appeal has been filed by the Insurance Company aggrieved by the quantum awarded by the Tribunal to the first and second respondents herein.

2.One Sugasini filed a claim petition before the Motor Accident Claims Tribunal, Sub-ordinate Judge Court, Vaniyambadi in M.C.O.P.No.119 of 2015 stating that on 28.02.2015 at about 07.45 pm in front of Tab India Company on the Krishnagiri to Hosur National Highway, the lorry bearing Reg.No.TN-04-AF-7024 belonging to the third respondent herein was driven by the driver in a rash and negligent manner and he entered the National Highways without taking due care and caution and collided with the two wheeler bearing Reg.No.TN-23-BZ-2394, in which the said Sugasini was riding pillion. Due to the said collusion, the said Sugasini suffered severe head injuries and body injuries. She was admitted initially at Hospital in Hosur and thereafter, shifted to Narayani Hospital, Vellore. She was taking treatment till 01.04.2015. She become permanently disabled and hence, she claimed a compensation of Rs.20,00,000/-. During the pendency of the petition, the said Sugasini died on 06.07.2015. Hence, the first and second respondents herein being the parents of the deceased Sugasini filed an amendment petition impleading themselves as claimants in their capacity as legal heirs of the deceased.

3.The appellant filed a counter interalia denying all the averments made in the petition filed by the first and second respondents. The appellant submitted that the first and second respondents had not established that the deceased died due to the injuries sustained in the accident. They had not conducted Post Mortem. The first and second respondents have not established that the deceased was taking continuous treatment and she died due to the injuries sustained in the accident. The driver of the lorry had violated the policy condition since he has not possessed a valid driving license. In fact, the discharge summary produced by the respondent show that the deceased was stable, when she was discharged.

4.The third respondent remained ex-parte before the Tribunal.

5.Before the Tribunal, the first and second respondents examined the first respondent as PW1 and one Annadurai as PW2 and marked Ex.P.1 to Ex.P.16. The appellant examined RW1 who had conducted the investigation on behalf of the appellant and marked Ex.R.1 and Ex.R.2, reports submitted by him.

6.The Tribunal considering the oral and documentary evidence held that the accident took place due to the negligent driving of the third respondent and held that the appellant as the insurer of the offending vehicle is liable to pay compensation. The Tribunal further found that the deceased died due to the injuries sustained by her in the accident and the first and second respondents are entitled to compensation and awarded a sum of Rs.23,20,561/- as compensation to the first and second respondents.

7.Against the said award dated 09.07.2020 made in M.C.O.P.No.119 of 2015, the appellant has filed the present appeal.

8.The learned counsel for the appellant submitted that the appellant is aggrieved by the quantum of compensation and not with regard to the finding of negligence. The learned counsel submitted that the multiplier method adopted by the Tribunal is erroneous since the first and second respondents had not established that the deceased died due to the injuries suffered by her in the accident. The discharge summary states that the deceased was discharged on 01.04.2017 and at the time of discharge, she was in a very stable condition and she was able to walk on her own. In the light of the evidence adduced by the first and second respondents themselves, the deceased recovered completely and the death was not caused due to the injuries suffered by her in the accident. The learned counsel further submitted that the first and second respondents have not let in any evidence to show that the deceased had taken continuous treatment till her death. Hence, the first and second respondents had failed to establish nexus between the death and the injuries suffered by her. In such circumstances, the first and second respondents are only entitled to compensation under the head 'Loss of Estate' for a limited extent of the injuries suffered by the deceased and not on account of her death. The learned counsel further submitted that an independent investigator appointed by the appellant had filed a report stating that the deceased Sugasini committed suicide by falling in a Well in her native Village. The learned counsel, therefore, submitted that the death was not due to the injuries suffered by the deceased Sugasini. The learned counsel for the appellant relied upon the following Judgments;

(a)Judgment of this Court in "***The Branch Manager, M/s.Oriental Insurance Co.Ltd., Vs. Manohar (deceased) & Ors.***" reported in "***2017 (2) TN MAC 81***"

(b)Judgment of this Court in "***Manoharan (Late) and others Vs.The Managing Director, Tamil Nadu State Transport Corporation, Dharmapuri***" reported in "***2010 (2) TN MAC 243 (Mad)***"

(c)Judgment of the Madurai Bench of this Court in "***Divisional Manager, New India Assurance Co.Ltd., Vs. S.V.Mani and Others***" reported in "***AIR 2009 Madras 22***"

(d)Judgment of this Court in "***National Insurance Co.Ltd. Vs. Sivabakkiyam (Deceased) and others***" reported in "***2018 (2) TN MAC 355***".

9.The learned counsel for the first and second respondents submitted that the appellant had taken contradictory stands as regards the cause of death. The appellant, in cross examination of the first and second respondents' witnesses had suggested that the deceased had committed suicide at Bangalore and the first and second respondents had brought the body from Bangalore and secretly cremated the body. The report filed by the Insurance Claims Investigator, RW1 suggests that Ex.R.2 dated 17.01.2017 was submitted one and half years after the accident, wherein, he had stated about the alleged suicide in a village. In Ex.R.1 dated 20.10.2015, the said investigator had not mentioned about any alleged suicide. The nature of the injuries suffered by the deceased would clearly show that the deceased died only due to the injuries suffered by her. She was in a dangerous state for nearly 48 hours and suffered serious head injuries. The fact that Post Mortem was not conducted, is not fatal to the claim made by the first and second respondents. The learned counsel for the first and second respondents relied upon the following Judgments;

(a)Judgment of the Hon'ble Apex Court in "***Oriental Insurance Co.Ltd., Vs.Kahlon @ Jasmail Singh Kahlon (deceased) through his Legal***

Representative, Narinder Kahlon, Gosakan and another" reported in "***2021 (2) TN MAC 305 (SC).***

(b)Judgment of this Court in "***Vatsala and others Vs. Meenakshi and others***" reported in "***2005 1 LW 560"***.

(c)Judgment of the Madurai Bench of this Court in "***Oriental Insurance Company Ltd., Vs. T.R.Subramani (Died) and others***" reported in "***2013 (1) TN MAC 60 (DB)***".

10.We have heard the learned Counsels and perused the oral and documentary evidence and pleadings on record.

11.Though the finding of the Tribunal is with regard to negligence and quantum, the appellant is aggrieved only with regard to the quantum of compensation awarded to the first and second respondents. Therefore, the only question is whether the Tribunal had awarded just compensation and had applied the multiplier method in accordance with law. In order to decide the said question, we need to ascertain whether the first and second respondents have established that the deceased Sugasini died due to the injuries suffered in the accident. In order to establish the said fact, the first and second respondents examined the first respondent, father of the deceased Sugasini as PW1. PW1 in his evidence would admit the following facts.

(i)that the first and second respondents have not produced any document to suggest that the deceased was taking continuous treatment.

(ii)that they had not conducted Post Mortem to ascertain the cause of death.

(iii)that they had not produced any document to show that before the death, the deceased suffered from any other complications on account of the injuries suffered by her in the accident.

12.From the above evidence, it is seen that between the date of discharge on 01.04.2015 and the date of death on 06.07.2015, there is no evidence let in by the first and second respondents to prove her health condition except their oral evidence. The first and second respondents ought to have established that the deceased died due to the injuries and the complication suffered by her because of the accident. They had neither conducted Post Mortem nor examined any doctor to show her health condition immediately before her death. Therfore, in our view, we cannot infer from the discharge summary which is the only document available that her death was due to the injuries suffered in the accident. However, we are also not inclined to accept the evidence let in by the appellant as regards the actual cause of death. We find from Ex.R.1 dated 20.10.2015 which is after the death of the deceased that there is no mention about the alleged suicide. Belated report which has been marked as Ex.R.2 dated 17.01.2017 suggests about the alleged suicide. However, since the first and second respondents have not established that the death occurred due to the injuries suffered by the deceased, we are of the view that the Tribunal erred in holding that the death was due to the injuries suffered in the accident.

13.In the light of the above finding, we have to ascertain as to what is the compensation that the first and second respondents are entitled to. The learned counsel for the appellant submitted that the Hon'ble Apex Court in ***"Oriental Insurance Co.Ltd., Vs.Kahlon @ Jasmail Singh Kahlon (deceased) through his Legal Representative, Narinder Kahlon, Gosakan and another"*** reported in ***"2021 (2) TN MAC 305 (SC)"*** held that even if the death is unrelated to the accident of the injuries, the claim for Loss of Estate would be still available which would include expenditure on Medicines, Treatment, Diet, Attendant, Doctor's fee etc., including income and future prospects depending on the nature of the injuries sustained by the deceased. The relevant portions of the said Judgment is extracted as follows;

> ***"18.*** *The Tribunal, on technicalities rejected his claim for salary, medical expenses and percentage of disability and granted a measly compensation of Rupees one lakh only by a cryptic order. We are, therefore, of the opinion that while the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal.*
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> ***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 fee, 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."

14.The learned counsel further relied upon the Judgment of this Court in "***Vasala and others Vs. Meenakshi and others***" reported in "***2005 1 LW 560***", wherein this Court on facts, held that the death happened four years after the accident which was due to the injuries suffered by the deceased. In that case, the claimants had examined the doctor who had explained the nature of injuries and opined that the death happened due to the injuries suffered by the deceased. This decision, in our view, is not applicable to the facts of the instant case, since the first and second respondents have not examined any doctor to show the nexus between the death and the injuries.

15.The other Judgments cited by the learned counsel for the first and second respondents is on the point that the maxim '**actio personalis moritur cum persona**' (personal action dies with the death of a person) will not apply in all cases. There is no dispute with regard to the above legal position. The only question is whether the nature of compensation that is payable to the first and second respondents for the injuries sustained by the deceased in the absence of nexus between the death and the injuries.

16.In the Judgment of the Hon'ble Apex Court in ***"Oriental Insurance Co.Ltd., Vs.Kahlon @ Jasmail Singh Kahlon (deceased) through his Legal Representative, Narinder Kahlon, Gosakan and another"*** reported in ***"2021 (2) TN MAC 305 (SC)***, the Hon'ble Apex Court has held that 'Loss of Estate' would include expenditure on Medicines, Treatment, Diet, Attendant, Doctor's fee etc., including income and future prospects which would have caused reasonable accretion to the estate but for the sudden accident which had to be made from the estate of the injured. Therefore the nature of the injuries sustained by the deceased is relevant to award compensation. The Hon'ble Apex Court, in the above case on facts held that the injured had become totally disabled and in the disability certificate, the Medical Board opined that the deceased suffered 100% permanent motor system disability. Therefore, in the facts and circumstances of that case, the Hon'ble Apex Court held that the multiplier method ought to have been adopted for the purpose of awarding compensation under the head 'Loss of Income'.

17.In the instant case, the first and second respondents have not established that the injured suffered permanent disability or functional disability. On the other hand, the only medical evidence available is the discharge summary issued by the Hospital which reads as follows;

> *“Conservative on neuroprotectives and supportives. 22 year old female with diffuse axonal injury was treated with ventilatory support and neuroprotectives and other supportive medications. She was given passive physio therapy, Ryle's tube feeding in intensive care unit. 48 hours later she was weaned off ventilator and endotracheal tube. She remained stable but, aphasic, right limbs started spontaneous movements. She was made to sit in a chair and given intensive physio therapy. She improved slowly and started walking on her own, voiding on her own, c/o double vision, no EOM restriction. Discharged home to continue rehab”*

The discharge summary would suggest that the deceased was able to walk and in any event, there was no permanent disability or functional disability so as to award compensation using multiplier method. Therefore we set aside the compensation awarded under the head loss of dependancy.

18.Since the first and second respondents have not established that the death was due to the accident, they are not entitled to the compensation under the heads Funeral Expenses and Loss of Love & Affection. Hence, the compensation awarded under the said heads are set aside. The monthly income determined by the Tribunal at Rs.12,798/- for the accident that took place in the year 2015 is meagre. We fix the notional monthly income at Rs.15,000/- and assess the loss of income for Five months at Rs.15,000/- X 5 = Rs.75,000/- (the period during which the deceased was alive after the accident). The transport expeneses awarded by the Tribunal at Rs.25,000/- is meagre considering the nature of injuries and the fact that she was admitted in the Hospital twice which incur substantial money for transporation. Hence, we are inclined to enhance the same to Rs.50,000/-. The Tribunal had also not awarded compensation under the head 'Attendant Charges'. The facts in the instant case would show that the victim required an attendant and hence, we are fixing Rs.1,00,000/- towards 'Attendant Charges'. Further, the damages towards clothes and articles at the time of accident can be fixed at Rs.10,000/- and accordingly, Rs.10,000/- is awarded under the head 'Damages to clothes and articles'. Since the deceased has suffered severe head injuries and body injuries, it would be just to award compensation under the head 'Extra Nourishment'. Therefore, Rs.50,000/- is awarded under the head 'Extra Nourishment'. The medical bills namely Ex.P.8 to Ex.P.11 suggests that the first and second respondents have spent Rs.1,57,393/- towards medical expenses. Hence, the compensation awarded under the head 'Medical Expenses' is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependancy	2073168	----	Set aside
2	Funeral expenses	15,000/-	----	Set aside
3.	Loss of love and affection	50,000/-	----	Set aside
4.	Medical expenses	1,57,393/-	1,57,393/-	confirmed
5.	Transport expenses	25,000/-	50,000/-	enhanced
6.	Loss of income	----	75,000/-	granted
7	Extra Nourishment	----	50,000/-	granted

8	Attendant Charges	----	1,00,000/-	granted
9	Damages to clothes and articles	----	10,000/-	granted
	Total	**23,20,561/-**	**4,42,393/-**	**Reduced by Rs.18,78,168/-**

Thus, the Appellant is liable to pay the compensation of Rs.4,42,393/-.

19.In the result, this Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal at Rs.23,20,561/- is hereby reduced to Rs.4,42,393/-. The Appellant / insurance company is directed to deposit the award amount now determined by this Court, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit along with interest and costs, less the amount already deposited if any, within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit, the first and second respondents are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The appellant / insurance company is permitted to withdraw the excess amount, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

(V.M.V., J) (S.M., J)
30.11.2022

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Index : Yes / No

To

1.The Motor Accident Claims Tribunal,
Special Sub-ordinate Court,
Vaniyambadi.

2.The Section Officer,
VR Section,
High Court of Madras,
Chennai.

V.M.VELUMANI,J.
and
SUNDER MOHAN,J.

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