IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.NO.3198 OF 2017
AND
C.M.P.NO.19678 OF 2017

The Branch Manager,
The National Insurance Co. Ltd.,
Tiruvarur Branch,
Tiruvarur District. ... Appellant/2nd Respondent

.Vs.

1. Sakunthala

2. Minor Suhasini

(Minor 2nd Respondent represented by
her mother and Next friend 1st Respondent
thru' Sakunthala)

3. Vasantha

4. Thangaraj alias Thangarasu ... Respondents 1 to 4/
Petitioners 1 to 4

5. Jayakumar ... 5th Respondent/1st Respondent

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.04.2017 made in M.C.O.P.No.6 of 2016 on the file of the Chief Judicial Magistrate Court, Motor Accident Claims Tribunal, Tiruvarur.

For Appellant : Mr.S.Vadivel

For Respondents : Mr.K.M.Subrahmanian
For R1 to R4

J U D G M E N T

The 2nd respondent/National Insurance Company Limited, Tiruvarur in M.C.O.P.No.6 of 2016 on the file of the Chief Judicial Magistrate Court, Tiruvarur/Motor Accident Claims Tribunal at Tiruvarur is the appellant herein.

2. They are aggrieved by the compensation granted owing to the death of one Suresh, on 20.10.2010 in a motor accident, which had occurred on 17.10.2008. The claimants before the Tribunal had filed a Motor Accident Claim Petitions on the ground that the death on 20.10.2010 was a direct cause of the injuries suffered due to the accident which occurred on 17.10.2008.

3. The brief facts of the petition are that, on 17.10.2008, the deceased Suresh and many other persons from his village had proceeded from their native place at Thiruthuraipoondi to Chennai for participating in a Dravidar Kazhagam Youth Conference in a tourist Van bearing registration number TN-09-AC-2516. They were coming via Pondicherry and after crossing Marakkanam, when they reached Kaipaani Village in ECR Road, in the early morning at 4.30 a.m. on 18.10.2008, the Van driver, apparently had driven the van in a rash and negligent manner, and when a vehicle came in the opposite direction applied sudden brakes. The Van over turned.

4. Owing to that particular accident, Suresh had suffered injuries in the head, fracture in the left shoulder, fracture in the left knee and other injuries all over the body. He was first admitted to Government Hospital at Pondicherry and later at Government Hospital at Thiruthuraipoondi. He was an inpatient from 18.10.2008 till 20.12.2008. Thereafter, he was taking treatment as an out patient. He died on 20.05.2010. Claiming compensation for the death of Suresh, his legal representatives had filed M.C.O.P.No.6 of 2016 before the Chief Judicial Magistrate Court, Thiruvarur/Motor Accident Claims Tribunal at Thiruvarur.

5. During the course of trial, the father of the deceased Suresh was examined as P.W.1 and one of the co-passengers, Mahendran was examined as P.W.2. They marked Exs.P1 to P8. Ex.P1 was the copy of the First Information Report. Ex.P2 was the Motor Vehicles Inspector's report. Ex.P3 was the Insurance Policy. Ex.P4 was the death certificate. Ex.P5 was the legal heirship certificate. Ex.P6 was the notice issued to the Motor Vehicle's Inspector. Ex.P7 was the driving license of the driver of that particular Van and Ex.P8 were medical documents. On the side of the respondents, one witness was examined as R.W.1 but no documents were marked.

6. The Tribunal took up the issues for determination namely, whether the accident occurred owing to the rash and negligent manner in which the Van was driven and thereafter, whether the Insurance Company/Insurer was liable to pay compensation for the death of Suresh and the total amount of compensation to be paid.

7. With respect to the first issue, the Tribunal found on the basis of the First Information Report and the evidence of P.W.2, who was one of the co-passengers that the Van driver was actually driving the Van in a rash and negligent manner and that after it had crossed Marakkanam in ECR Road and early in the morning at 4.30 a.m., the Driver had to apply sudden brakes, and owing to the speed in which the Van was moving, it over turned and thereby caused the accident. The negligence was therefore, placed on the Van driver and I would confirm that particular finding.

8. With respect to the second issue, the Tribunal observed that though the accident had occurred on 17.10.2008 and that Suresh unfortunately died on 20.05.2010. The Tribunal had observed that he had died about 1 ½ years after the accident. The total claim for compensation was Rs.10,00,000/-. The Tribunal noted the arguments advanced by the Insurance Company that since there has been no medical documents produced to show that the death was directly related to the accident, and that between the date of the accident and between the actual date of death, there was a gap of 1 ½ years also observed as a fact that even the claimants had not produced any evidence that, during the period of 1 ½ years deceased Suresh was in hospital or taking continuous treatmennt. After discussing as above, the Tribunal proceeded to hold that the respondents/Insurer should have proved that the death was not due to the accident.

9. The reasoning of the Tribunal is faulty. That the accident occurred is a fact. That the deceased Suresh suffered injuries is a fact. Whether that those particular injuries were the direct cause for his death is a fact known exclusively only to the Doctors who treated Suresh and probably to the immediate family members of the deceased Suresh. If a fact is known exclusively to those individuals and they do not graze the witness box then, if such witnesses are not produced and evidence is not produced before the Court then, under illustration "g" to Section 114 of the Indian Evidence Act, 1872, a strong presumption will have to be drawn that such evidence had not been produced only because such evidence would be adverse to the interest of party, who relied on such evidence.

10. Only two witnesses were examined on behalf of the claimant. The first witness was the father of the decesaed.

The second witness was a co-passenger in the Van. Ex.P8 is the only document which reflects the medical records.

11. A perusal of Ex.P8 shows that it contains five medical bills. The first is issued by Dr.A.R.Adhiyaman, which is a prescription and it is dated 19.10.2008. The second one is a prescription given by Dr.V.Kumaraswamy and it is dated 24.10.2008. The third one is again a prescription given by Dr.V.Kumaraswamy dated 25.10.2008. The fourth one is a medical bill for purchase of medicines from Sarojini Medicals and it is dated 29.10.2008. The fifth one is a prescription given by Dr.V.Kumaraswamy dated 25.10.2008.

12. It is seen that these documents are from 19.10.2008 till 25.10.2008. The deceased died in the year 2010. For the entire year of 2009 and for the 6 months period of the year 2010, no documents have been produced to show that the deceased was actually taking treatment. Even if it is to be presumed that he was taking treatment, the claimants could have produced some oral evidence to show that he was going to the hospital and visiting the hospital for treatment as out patient. Even if he had been taking treatment as an out patient in any particular hospital, the out patient chits could at least have been produced to show that there was continuous treatment being given to the deceased from the date of the accident till the date of the death. These are all documents, which would be available and could be produced only by the claimants. The Insurance Company would never know as to the activities of the deceased Suresh from the date of the accident and till the death of his death. As a matter of fact, they will never know what activity he was doing even prior to 2008, prior to the date of accident.

13. So far as the Insurer is concerned, they have a contract only with the insured and not with Suresh to know about his personal activities or the injuries which he suffered or the medical treatment which he took. They can never come to the Court and prove that he did not die owing to the accident. If sufficient documents had been produced on behalf of the claimant then a reasonable examination of those documents could be done by this Court to find out whether there is any connection between the accident and the death. Unfortunately, Ex.P8 is the only document produced as medical prescription and each one of them had been stated above and they are all of the year 2008. They are only prescriptions for medicines and bills for purchase of those medicines. The claimants could have atleast summoned the Doctors from the Thiruvarur Government Hospital and from Pondicherry Government Hospital or summoned the medical reports from those Hospitals. They had also not filed any application to adduce additional evidence even before this Court.

14. In view of these facts, I cannot come to rescue of the claimant by granting any compensation. The Tribunal had granted a total compensation of Rs.9,68,000/- when a sum of Rs.10,00,000/- had been sought. The Tribunal had taken his income at Rs.4,500/- and had applied a multiplier of 17. The Tribunal had not deducted any amount towards personal expenses. The entire reasoning of the Tribunal is faulty and it is to be mentioned that owing to this particular award, the claimants had been mislead by the Tribunal.

15. The learned counsel for the respondents placed reliance on a judgment of the learned Single Judge reported in 2014 (2) TN MAC 685 in New India Insurance Company Limited Vs. R.Vijayakumar since (died). In that particular case, after the accident had occurred and after the injuries having been suffered, the injured had filed a claim petition and during the course of the petition he died and thereafter, claiming that there was a nexus between the injuries and the death, the scope of the petition was widened. Moreover, the Doctor was also examined as P.W.4 who gave an opinion that the death could be due to the injuries sustained by the deceased in the accident.

16. In the instant case, there is no such evidence produced. Suresh had not filed any petition for the injuries suffered. The only documents produced as aforesaid are four medical prescriptions and one medical bill for purchase of medicines. They cannot establish nexus between the nature of injuries suffered or the cause of death of the deceased Suresh.

17. In view of the fact that even the judgment cited had been wrongly applied thereby giving a false hope to the claimants herein, though the present appeal is allowed, I would call for an explanation from the then Chief Judicial Magistrate/ Motor Accident Claims Tribunal, Thiruvarur who had rendered the judgment in M.C.O.P.No.6 of 2016 on 10.04.2017 to explain as to the parameters which had been applied for granting the compensation of Rs.9,68,000/- to the claimants on the basis of the evidence produced and what was the reasoning applied by the learned Judge to actually hold that there was nexus between the injuries suffered and the death of Suresh.

18. Registry is directed to call for explanation and place the same before this Court through circulation.

19. In view of the above observations, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

20. The appellant is permitted to file necessary application seeking payment out of the amount deposited together with accrued interest.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kkn

To

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

Copy To:-

1. The Registrar Judicial,
High Court, Madras.

2. The Section Officer,
'B' Section,
High Court, Madras.

3. The Section Officer,
V.R. Section,
High Court,
Madras - 600 104.

+1cc to Mr.S.Vadivel, Advocate, S.R.No.22969
+1cc to Mr.K.M.Subrahmanian, Advocate, S.R.No.23051

C.M.A.NO.3198 OF 2017 AND
C.M.P.NO.19678 OF 2017

EV(CO)
PBS/06/05/2022