



C.M.A(MD)No.487 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.10.2022

Pronounced on : 20.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.487 of 2010

The Branch Manager,
Royal Sundaram Alliance Insurance
Company Limited,
Branch Office at Kumari Associate
178, K.P.Buildings,
R.V.Puram, Nagercoil.

... Appellant / 3rd respondent

Vs

1.Rosily
2.Vijayashalini
3.Vinitha Shalini
4.Jebaraj
5.Shajikumar

... 1 to 3 Respondents/ Petitioners

... Respondent Nos.4 and 5
/ Respondents 1 and 2

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of M.V.Act, to set aside the fair and decreetal order dated 9.12.2009 made in M.C.O.P.No.58 of 2005 on the file of Motor Accident Claims(Subordinate Judge), Kuzhithurai and allow this appeal.



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For Appellant : Mr.S.Srinivasa Raghavan
For R1 to R3 : Mr.N.Mohideen Basha
For R4 and R5 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order M.C.O.P.No. 58 of 2005 on the file of Motor Accident Claims(Subordinate Judge), Kuzhithurai. The appellant is the third respondent, respondents 1 to 3 are the claimants, 4th respondent is the first respondent and fifth respondent is the second respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 02.12.2004, the deceased John Rose was travelling as a pillion rider in a two wheeler bearing registration number TN 74 W 3558, was riding by the first respondent. The first respondent drove the vehicle in a rash and negligent manner. A dog crossed the road and when the first respondent applied brake, the deceased fell down from the vehicle and he sustained injuries. He was taken to Sivanantha Hospital and after getting first aid, he returned to his house. He was having pain on the back side of the head and again on 07.12.2004, he was taken to Kaliyakkavilai Jeyantha Hospital. When



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C.T. Scan was taken, it came to know that the deceased sustained grievous injury on the head. He was taken to Medical College Hospital, Thiruvananthapuram. On 08.12.2004, he succumbed to the injuries. The age of the deceased at the time of accident was 41 years. He was working as a Switch Operator in the Village Panchayat and was earning Rs.540/-per month and he was running a sound and light service and was earning Rs.6,000/- per month. The petitioners are his dependants and they claim a sum of Rs.5,00,000/- as compensation.

3.Brief substance of the counter filed by the respondents 1 and 2 is as follows:

The first respondent was not responsible for the accident. The insurance policy was in force. The compensation claimed is excessive.

4.Brief substance of the counter filed by the third respondent is as follows:

The death is not due to the injuries sustained in the accident. There is a delay of 7 days in registering the First Information Report. There was no road accident and the vehicle mentioned was not involved in the accident. Only by



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the collusion of respondents 1 and 2, the petitioner has come forward with this false case. The age, income of the deceased are all denied. The cause of death is denied. The claim is baseless.

5. Brief substance of the additional counter filed by the third respondent is as follows:

A pillion rider is not at all entitled for compensation from the insurer of the vehicle. The deceased is alleged to have travelled as a pillion rider. The death was not due to any head injury. The death is due to rupture of blood vessels in the esophagus which in turn due to cirrhosis of liver and not related to any injuries sustained in the road accident.

6. Three(3) witnesses were examined and thirteen(13) documents were marked on the side of the petitioner. Two(2) witnesses were examined and one(1) document was marked on the side of the respondents. The Tribunal awarded a sum of Rs.3,27,000/- as compensation to be paid by the third respondent.



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7. Against the award, the third respondent preferred this appeal on the following grounds:

The Tribunal ought to have found that the cause of death of the deceased was not due to the road accident. It was due to some defect in the liver portion. The Tribunal ought to have considered that the third respondent examined the Doctor who conducted post mortem and established that the death was not due to the injuries of the road accident. The Tribunal ought to have considered that the liver was enlarged with micro nodular cirrhosis changes and the spleen was also enlarged. The cause of death was due to bleeding following rupture of esophageal varicose. The omission to examine the doctor who immediately examined the deceased after the accident is fatal. Since, the medical records are very clear that the deceased was a chronic alcoholic and died only because of cirrhosis. The quantum of compensation fixed by the Tribunal is excessive. The Tribunal is wrong in fixing the monthly income at Rs.3,000/- without any proof. The Tribunal fixed the liability on the appellant without considering that the death was not due to the injuries of the road accident.



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8.On the side of the appellant, it is stated that the death was due to the rupture of the food pipe and it is not due to the accident. The deceased was a chronic alcoholic and the rupture of blood vessels in the esophagus which in turn due to cirrhosis of the liver and if this situation is possible when the patient is a chronic alcoholic and due to gastric and intestine disease, there is no nexus between the cause of the death and the accident. Except that there is a swelling on the forehead, there is no cause by the accident.

9.On the side of the respondent it is stated that the report of the Doctor was not marked before the Tribunal. The Doctor who conducted the post mortem was examined. He has stated that there are superficial contusions and that the immediate cause of death is the accident. From the evidence of P.W.1 and 2 and from Ex.P1, Ex.P3, Ex.P4, Ex.P5 and Ex.P6, it is decided that the accident has happened due to the rash and negligent driving of the rider of the two wheeler. From Ex.P7, it is clear that the vehicle was insured with the appellant.

10.The evidence of R.W.2 and Ex.P2, it is clearly stated that the reason for the death is due to rupture of blood vessels in the esophagus which in turn due to cirrhosis of liver and not related to the Road Traffic Accident. From the



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above circumstances, it is decided that the death of the deceased was not due to the injuries sustained by him in the incident. But the injuries were not the cause for the death. Since the deceased could not survive, there was no possibility for the deceased to get disability certificate for the deceased. In the above circumstances, it is decided that for the injuries sustained by the deceased in the accident, he was entitled to Rs.1,00,000/- for the head injuries.

11.The medical bills are marked as Ex.P.12 and Ex.P.13. The Tribunal has awarded Rs.2,710/- towards medical expenses. The petitioner is entitled to Rs.1000/- towards damage to articles. The claimants are entitled to Rs.2290/- towards transport expenses. Rs.2,00,000/- is awarded towards head injury. Totally, the claimants are entitled to a sum of Rs.2,06,000/-.

12.Accordingly, this Civil Miscellaneous Appeal is partly-allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from a sum of Rs.3,27,000/- to **Rs.2,06,000/- (Rupees Two Lakhs and Six Thousand only)** which shall carry interest at the rate of 7.5% per annum.



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(ii) The appellant /Insurance company, is directed to deposit the entire compensation of Rs.2,06,000/- (Rupees Two Lakhs and Six Thousand only) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.58 of 2005 on the file of the Motor Accidents Claim Tribunal, Kuzhithurai, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant/insurance company, the first respondent / 1st claimant is permitted to withdraw an amount of Rs.1,00,000/- (Rupees One Lakh only) with proportionate interest and the 2nd and 3rd respondents / 2nd and 3rd claimants are permitted to withdraw an amount of Rs.53,000/- (Rupees Fifty Three Thousand only) each with proportionate interest.

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Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims(Subordinate Judge), Kuzhithurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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