



C.M.A(MD)No.534 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.09.2022

Pronounced on : 02.11.2022

CORAM

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

C.M.A(MD)No.534 of 2010

1.K.Vellaisamy @ Velladurai(died)

2.V.Muthumeenal

3.Minor.Soundariya

4.Minor.Iswariya

(Minor appellants 3 and 4 are represented
by his mother and natural guardian the
second appellant)

(Appellants 2 to 4 are brought on record
as legal representatives of the deceased
sole appellant vide Court order dated
08.02.2012)

...Appellant / Claimant

Vs

1.A.Maria Alangaram

2.The Branch Manager,
United India Insurance Co.Ltd.,
City Branch Office II,
No.254, Goods Shed Street,
Madurai.

... Respondents / Respondents



C.M.A(MD)No.534 of 2010

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act, 1923, to set aside the decree and judgment dated 30.11.2009 passed in W.C.No.197 of 2005 on the file of Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Madurai and enhance the compensation and thereby allow this appeal.

For Appellant	: Mr.M.Venkatesan
For R1	: No appearance
For R2	: Mr.C.Jawahar Ravindran

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order made in decree and judgment dated 30.11.2009 passed in W.C.No.197 of 2005 on the file of Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Madurai. Appellants 2 to 4 are the legal representatives of the deceased first appellant / claimant. Respondents are the respondents in the claim petition.



C.M.A(MD)No.534 of 2010

WEB COPY

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

The petitioner was working as a lorry driver in a lorry bearing registration number TCM 1819 that belongs to the first respondent. When the said lorry was taken for a trip from Madurai to Bangalore, and was near Eudhigal village, Neelamangalam Taluk, the petitioner was covering the loaded goods and he slipped down and fell unconscious. He was admitted as inpatient in the National Institute of Mental Health and Neuro Science, Bangalore from 23.05.2005 to 25.05.2005 and then he was treated as inpatient in Government Rajaji Hospital, Madurai from 26.05.2005 to 31.05.2005 and then he is taking treatment as outpatient till date. Due to the accident the petitioner sustained severe head injury on his left side and extensive injury on his left eye and multiple grievous injury all over the body. His left eye was totally blind. He is unable to chew the food and he could not do his avocation as earlier. He filed a claim petition before the Deputy Commissioner of Labour, Madurai.

3. Brief substance of the counter filed by the first respondent is as follows:



C.M.A(MD)No.534 of 2010

The petitioner was the driver, he need not attend to the work of covering the goods in the lorry. The tie-up work should be carried out by loading and unloading workers. The accident has happened only due to the negligence and unwarranted act of the petitioner. The first respondent vehicle is insured with the second respondent. Hence the second respondent is liable to pay compensation to the petitioner. The monthly income of the petitioner stated as Rs.4,500/- is denied and the claim for compensation of Rs.5,00,000/- is excessive.

4.Two witnesses were examined and seventeen(17) documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondents. The Labour Commissioner has awarded a sum of Rs.1,38,284/- as compensation.

5.Against the award, the claimant preferred an appeal on the following grounds:

The Labour Commissioner failed to consider Ex.A12 and the deposition of P.W.3. The Labour Commissioner fixed the disability as 30% instead of 57%. The Tribunal failed to consider the evidence of P.W.2 and Ex.A15.



C.M.A(MD)No.534 of 2010

The Tribunal failed to consider Ex.A12, case sheet, wherein it is clearly stated that the left eye of the petitioner was totally damaged. The loss of left eye sight was not considered by the Tribunal. The following substantial questions of law are raised by the appellant:

- a) whether the Court below was right in awarding the compensation or not?
- b) whether the Court below is right in assessing the disability suffered by the appellant or not?
- c) whether the Court below has considered the Ex.A12 case sheet for taking treatment for the Eye in assessing the disability which warrants interference?
- d) whether the Court below is right in awarding low compensation to the petitioner without considering the document Ex.A12 and Ex.A15 and the evidence of P.W.3 when there was no contradictory evidence let by the respondent?

6.Issue Nos.1 to 4:

On the side of the appellants it is stated that the petitioner sustained 57% disability. But the Labour Commissioner has fixed the disability only as 21%. The Labour Commission failed to consider that the petitioner lost the vision of his left eye. The claimant filed a Civil Miscellaneous Appeal and the appeal was remanded back to the Labour Court for examination of the



C.M.A(MD)No.534 of 2010

Doctor who gave treatment. The Doctor has deposed that there is a disability of 30% in the eye sight and there is 27% other disabilities.

7.On the side of the respondent it is stated that the Doctor who gave treatment was not examined. In the cross examination, the Doctor has admitted that there is no loss of vision. In Ex.A6, there is no endorsement as to the loss of vision. In the claim petition, the Labour Commissioner awarded a sum of Rs.96,799/-. The claimant filed an appeal. The matter was remanded back to the Labour Commissioner and the Labour Commissioner fixed the compensation at Rs.1,38,284/-. Even after remand, no additional document was produced on the side of the appellant and no additional oral evidence was placed. Only an ortho Doctor was examined and an ophthalmologist was not examined on the side of the appellant and hence the appellant is not entitled to enhancement of the compensation.

8.The 1st appellant/ claimant died and the legal representatives are not entitled to claim compensation. The legal representatives of the deceased claimant cannot prosecute or proceed with the appeal.



C.M.A(MD)No.534 of 2010

9. On the side of the respondent, a judgment of this Court reported in **(2007) 2 MLJ 633** in the case of **Ramu (Died) and Another Vs H. Ramachandran and another**, is cited, wherein, it is held as follows:

"Motor Vehicles Act(59 of 1988), Section 166 - Claim for compensation by the injured - Award passed - Injured claimant filing appeal for enhancement of compensation - Death of injured claimant pending appeal - Legal representatives of the deceased claimant cannot prosecute or proceed with the appeal - Compensation in respect of personal injuries will not be available to the legal representatives of the injured claimant - Legal representatives of the claimant, would be entitled to the compensation awarded by the Tribunal alone - Appeal dismissed."

10. On the side of the respondent another judgment of this Court reported in **2010(2) TNMAC 243** in the case of **Manoharan and 5 others vs The Managing Director, Tamil Nadu State Transport Corporation, Dharmapuri**, is cited, wherein it is held as follows:

"A personal action dies with parties to cause of action - Principle applicable in cases where Suit for damages and defamation assault or other personal injuries sustained by Plaintiff which resulted in decree in favour of Plaintiff - Because in such a case cause of action merges with decree and decretal debt forms part of Plaintiff



C.M.A(MD)No.534 of 2010

estate and Appeal from decree by Defendant becomes a question of benefit or detriment to estate of Plaintiff which his LRs. are entitled to uphold - Case law discussed."

11. Another judgment of this Court reported in **2011(1) TN MAC 826** in the case of **New India Assurance Co. Ltd., rep. by its Manager, 161-A, Keezhaveli Veethi, Madurai Vs S.Pooranam** is cited, wherein it is held as follows:

"Therefore, cause of action to continue Claim proceedings does not survive to Second Claimant/wife as death was not caused as a result of accident and she is not entitled to any relief - However, Tribunal proceeded to pass award without any justifiable cause - Award of Tribunal liable to be set aside."

12. On the side of the appellant it is stated that under the Workmen compensation Act, a claim does not abate on the death of the workmen. A judgment of the Bombay High Court reported in **AIR 1968 BOM 328** in the case of **Margarida Gomes and another Vs M/s. Mackinraon Mackenzie and Co. Pvt. Ltd., Bombay**, is cited, where in it is held as follows:

"(C) Workmen's Compensation Act(1923), S.32 - Rules, under - Bombay Workmen's Compensation Rules (1934), R.41 -



C.M.A(MD)No.534 of 2010

WEB COPY

Death of workman during pendency of proceedings in respect of claim for compensation - Claim does not abate- Heirs can be brought on record - Separate claim by the heirs not necessary."

13.On the side of the appellant, another judgment of this Court reported in **1996-1-LW 491** in the case of **G.Ganesan and another Vs C.Polycarp Pancharathnam, Thiruppathi, Mudaliar, United India Insurance Co.,Ltd., Divisional Office, Trichy**, is cited, wherein it is held as follows,

"Motor Vehicles Act, Ss.96 and 110-A, Tort, and C.P.C., O. 22, R.5, etc. - Death of appellant/claimant pending an appeal against award of M.A.C. Tribunal, praying for enhancement of compensation - Plea by insurance company that cause of action did not survive and that appeal has abated - Plea negatived."

14.The original appeal was filed only by the injured claimant. The legal representatives of the injured claimant did not file any fresh proceedings for enhancement of compensation. The entire appeal is based only on the assessment of disability by the Tribunal. The Tribunal fixed the disability at 30% wherein the appellant claimed the disability to be fixed at 57%. The ophthalmologist was examined as P.W.3 and he has deposed that the claimant



C.M.A(MD)No.534 of 2010

was having 30% permanent disability. P.W.2 -A Neuro Surgeon has deposed that the disability is 57%. P.W.2 is not an ophthalmologist and the evidence of P.W.3 has to be given more weightage than that of P.W.2. Therefore, it is decided that the quantum of disability fixed by the Labour Commissioner is reasonable. The question raised by the appellant is based only on the fixation of disability which is a factual matrix. No question of law was raised on the side of the appellant. All the questions are only based on facts. In the above circumstances, it is decided that there is nothing sufficient enough to interfere with the orders of the Labour Commissioner.

15. Accordingly, this Civil Miscellaneous Appeal is dismissed.

(i) The quantum of compensation awarded by the Tribunal is confirmed and the second respondent is directed to deposit Rs.1,38,284/- (Rupees One Lakh Thirty Eight Thousand Two Hundred and Eighty Four only) (if not already deposited) together with interest at the rate of 7.5% per annum and proportionate costs to the credit of W.C.No.197 of 2005 on the file of Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Madurai, within a period of eight weeks from the date of receipt of a



C.M.A(MD)No.534 of 2010

copy of this order. The appellants are not entitled for any interest for the default period.

(ii) On such deposit being made by the second respondent/ Insurance Company, the 2nd appellant is permitted to withdraw their share of Rs.78,284/- (Rupees Seventy Eight Thousand Two hundred and Eighty Four only) each, along with proportionate interest at the rate of 7.5% per annum.

(iii) The appellants 3 and 4/ minors are entitled to Rs.30,000/- (Rupees Thirty Thousand only) each, which is ordered to be deposited in any one of the nationalized bank until they attain majority and the second appellant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

02.11.2022

Index: Yes / No
Internet : Yes / No

pnn



WEB COPY



C.M.A(MD)No.534 of 2010

R. THARANI, J

pnn

To

- 1.The Commissioner for Workmen Compensation
(Deputy Commissioner of Labour),
Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

C.M.A(MD)No.534 of 2010

02.11.2022