



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2022

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.592 of 2019

and

C.M.P(MD)No.7177 of 2019

The Branch Manager,
National Insurance Company Limited,
First Floor,
Jerom Buildings, 4th Station Road,
Trichy District. :Appellant/Second respondent

.vs.

1.Jeyarani : Ist Respondent/Ist Petitioner

2.Velvizhi :2nd Respondent/2nd Petitioner

3.Minor Chithu :3rd Respondent/3rd Petitioner

Durai Vanniyar :4th Respondent/4th Petitioner
(since died)

4.K.S.Ravichandran :5th Respondent/Ist Respondent

5.The Branch Manager,
United India Insurance Company Limited,
12, Madathu Street, First Floor,
Kumbakonam,
Thanjavur District. :6th Respondent/3rd Respondent

(Minor third respondent is represented by his natural guardian and mother, the first respondent herein)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the decree and judgment made in M.C.O.P.No.192 of 2015, dated 2.2.2019, on the file of Chief Judicial Magistrate Court, Thanjavur at Kumbakonam.

For Appellant	:Mr.A.Ilango
For Respondents	:Mr.A.N.Ramanathan
1 to 3	
For Respondent-4	:No appearance
For Respondent-5	:Mr.C.Jawahar Ravindran



JUDGMENT

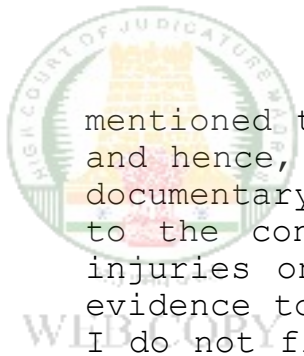
This Civil Miscellaneous Appeal is directed against the decree and judgment made in M.C.O.P.No.192 of 2015, dated 2.2.2019, on the file of Chief Judicial Magistrate Court, Thanjavur at Kumbakonam.

2.The Insurance Company is the appellant herein challenging the award passed in M.C.O.P.No.192 of 2015, on the ground that the deceased has not died due to the accidental injuries and also challenging the quantum of compensation.

3.The factum of the accident, manner of the accident and rash and negligence on the part of the offending vehicle are not disputed and hence, the findings of the Tribunal with regard to the same are confirmed.

4.Based upon the documents Ex.P1 and Ex.P2 First Information Report and Motor Vehicle Inspector's Report and two Wound Certificates issued by the Government Hospital, Kumbakonam under ExP3 and by Thanjavur Medical College Hospital under Ex.P4, the Tribunal has rightly come to the conclusion that the deceased has suffered serious injuries in the accident. Based upon Ex.P7, the learned counsel for the appellant/Insurance Company would contend that the deceased was suffering from cancer at the time of the accident and hence the cause for the death is not due to the accidental injuries but due to the cancer which is pre-existing with the injured. In this regard, Dr.Moideen Abdul Khader was examined as P.W.2 and Dr.Thirumalai Pandian was examined as P.W.3 and Dr.Bharathi was examined as P.W.4.

5.Both P.W.3 and P.W.4 has categorically stated about the admission of the injured after the accident initially at Kumbakonam Government Hospital and subsequently at Thanjavur Medical College Hospital and based upon discharge summary both P.W.3 and P.W.4 medical evidence are to the effect that there is no symptom of cancer existed at the time of accident. Further, the injured also taken treatment in a private hospital on 13.8.2013, 16.8.2013 and 18.8.2013, wherein, they have taken some treatment for cancer. During the cross-examination of P.W.1, she has stated that they have made scan test in the private scan centre and Ex.P8 medical bill is admitted but in the cross-examination she admitted that her husband is not suffering from cancer. However, the Insurance company has raised a point that the cause for the death is cancer and not due to the accidental injuries. Based upon the medical evidence of P.W.3 and P.W.4 coupled with discharge summary Ex.P7, the Tribunal has come to the conclusion that the cause for the death is the injuries sustained in the accident. It is the specific evidence of P.W.3 Doctor that the injuries sustained in the accident is sufficient enough to cause the death. As per the evidence of P.W.3 Dr.Thirumalaipandian, both Tibula and Tibia bones has been fractured. He denied the suggestion that the injured could have died due to cancer. Ex.P4 is to the effect that the treatment has been given admittedly at Thanjavur Medical College Hospital by P.W.4 and the medical records marked as Ex.X1, wherein, it is



mentioned that the injured is not suffering from any other disease and hence, the medical evidence of P.W.3 and P.W.4 Doctors and the documentary evidence as stated supra, the Tribunal has rightly come to the conclusion that the deceased died due to the accidental injuries only. In the absence of any contra evidence much less any evidence to probabalise the plea of the appellant/Insurance Company, I do not find any reason to interfere with the findings rendered by the Tribunal as to the cause of the death. Accordingly, the above contention of the appellant/Insurance Company stands negatived.

6. On the point of quantum of compensation, I find that there is an error in calculation in respect of 1/4th deduction towards personal expenses of the deceased, however, the Tribunal has neither made the calculation as per the **Pranay Sethy's case** nor as per **Sarla Verma's case** and no future prospects was added and there was no deduction for personal expenses of the **deceased**. After making a rough calculation, I find that even after giving 10% increase for the future prospects and making 1/4th deduction, the award amount arrived at by this Court and the award of the Tribunal is in close margin.

7. Hence, in the interest of justice, since the difference between the draft calculation made by this Court and the award of the Tribunal is very narrow in margin, the Civil Miscellaneous Appeal stands dismissed, by confirming the award of the Tribunal. It is represented by the learned counsel for the appellant/Insurance Company that the entire award amount has been deposited to the credit of the claim petition. Therefore, the major claimants 1 and 2 are permitted to withdraw their share in the award amount with proportionate accrued interest and costs, as per the terms and ratio of apportionment made by the Tribunal, by filing necessary application before the Tribunal. The Tribunal is directed to deposit the share in the award amount together with accrued interest and costs in respect of the minor third claimant, in an interest bearing fixed deposit, in any one of the nationalised Bank, initially for a period of three years and renewable thereafter, till the minor attains majority. The first respondent, mother and guardian of the minor third claimant is permitted to withdraw the interest from the fixed deposit, once in three months, directly from the Bank and utilize the same for the welfare of the child. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

vsn



To

1.The Chief Judicial Magistrate,
Thanjavur at Kumbakonam.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A. ILANGO, Advocate (SR-19657[F] dated 20/04/2022)

+1 CC to M/s.AN. RAMANATHAN, Advocate(SR-20162[F] dated
21/04/2022)

C.M.A(MD) No.592 of 2019
and
C.M.P (MD) No.7177 of 2019
20.04.2022

MGJ(11.05.2022) 4P 6C