

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
16.03.2022	29.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.589 of 2018

and

C.M.P(MD)Nos.6702 of 2018 and 11151 of 2021

The Branch Manager,
Oriental Insurance Company Ltd.,
T.S.No.3607/21, 2nd Floor,
Sathiyamoorthi Road,
Pudukkottai.

.. Appellant /2nd Respondent

Vs

1.Valli

Gunasekaran (died)

2.Selvi

3.Vijayarani

4.Minor Priyanga

5.Minor Balamurugan

.. Respondents 1 to 5 /
Petitioners

R.Shanmugam (died)

6.Meenakshi (died)

7.Murugan @ Murugesan @ Suresh (died)

8.Ananthan

9.Yamuna

[Notice returned as 'refused']

.. Respondents 6 to 9 /
Respondents 3 to 6

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 22.08.2017, passed in M.C.O.P.No.147 of 2011 by the Motor Accident Claims Tribunal / Special Court for E.C. and N.D.P.S. Act Cases, Pudukkottai.

For Appellant : Mr.S.Bala Karthick
For Respondents 1 to 5 : Mr.K.Gokul
For Respondent No.8 : No appearance



JUDGMENT

This Civil Miscellaneous Appeal is directed against the award, dated 22.08.2017, passed in M.C.O.P.No.147 of 2011 by the Motor Accident Claims Tribunal / Special Court for E.C. and N.D.P.S. Act Cases, Pudukkottai.

2.The Insurance Company is the appellant herein, challenging the award passed in M.C.O.P.No.147 of 2011 on the ground that there is no nexus between the injuries sustained in the accident and the death and also on the quantum of compensation.

3.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

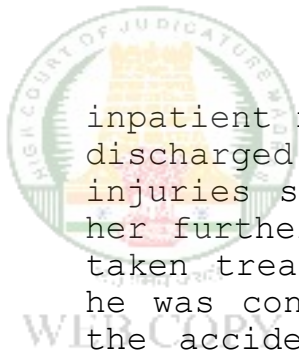
4.The respondents 1 to 3 have filed the above claim petition in M.C.O.P.No.147 of 2011 before the Tribunal alleging that due to the injuries sustained in the road traffic accident on 04.04.2009, the deceased had died on 26.04.2010 and he was in a continuous treatment and hence, the claim petition.

5.The appellant / Insurance Company with whom the offending vehicle was insured, filed a counter statement disputing that the death of the victim had no nexus with the injuries suffered by him in the accident.

6.During the trial, the third claim petitioner examined herself as P.W.1 and marked Ex.P.1 to Ex.P.7 and the occurrence witness is examined as P.W.2. The staff of the Regional Transport Office, Pudukkottai, is examined as R.W.1 and Ex.R.1, Ex.R.2 and Ex.R.3 were marked.

7.The Tribunal held that due to the accidental injuries, the deceased Chinnathambi died and arrived at the compensation and hence, the appeal by the Insurance Company.

8.P.W.1, the daughter of the deceased, both in the claim petition as well as P.W.1 would depose that on 04.04.2009 at about 02.30 p.m., the deceased Chinnathambi was returning to his house after purchasing things in a private bus belonging to the first respondent bearing Registration No.TN-55-B-1627. When the bus was stopped in Mangadu Poochikadai Bus Stop, the deceased Chinnathambi was getting down from the bus. The conductor without noticing the deceased Chinnathambi, had blown the whistle and so, the driver rashly and negligently and high speed, had driven the bus and due to that, the deceased Chinnathambi fell down and sustained injuries. Due to the accident, the deceased Chinnathambi sustained fracture on his left thigh and hip and injuries all over the body. He was immediately admitted in Government Hospital, Pudukkottai as



inpatient from 04.04.2009 to 22.04.2009 for treatment. Then, he was discharged and he continued the treatment as outpatient. Due to the injuries sustained in the accident, he died on 26.04.2010. It is her further evidence that his father, the deceased Chinnathambi has taken treatment for the grievous injuries sustained in his hip and he was continuously taking treatment for the injuries sustained in the accident. In spite of that, he succumbed to the injuries on 26.04.2010. The copy of Accident Register is marked as Ex.P.2. The O.P. Sheet is marked as Ex.P.5. The case sheet is marked as Ex.P.7. As per Ex.P.7, the deceased Chinnathambi sustained fracture in the left ilium. The Ex.P.7 corroborated the oral evidence of P.W.1. Though the accident took place on 04.04.2009, the deceased Chinnathambi died only on 26.04.2010.

9.The appellant / Insurance Company raised the point that since the injured died after one year, there is no cause of action arising from the accidental injuries. In the absence of any nexus between the accidental injuries with the death of the injured, the claim petition is not maintainable.

10.In the decision in **the Branch Manager, Oriental Insurance Company Ltd., Divisional Office, Palakkadu v. Palanichamy (dead) through LRs.** reported in 2015(1) TNCJ 961 (MAD) (MB), this Court has held as follows:

"No doubt, no post-mortem has been conducted. If post-mortem has been conducted, it would reveal the exact cause of death. In criminal cases, the burden of proof expected is proof beyond reasonable doubt. The exact cause of death is essential to fix the criminal responsibility upon the accused persons. The proof required in the civil case is preponderance of probabilities and not proof beyond reasonable doubt. Therefore, filing of the post-mortem report is not sine-qua-non to arrive at the conclusion that the death was on account of the injuries sustained. Had the postmortem been done, it would have been better. But even otherwise, considering the nature of injuries, period of treatment, nature of disability suffered one would be able to come to the conclusion as to whether the death could have been on account of the injuries sustained".

11.In C.M.A.No.300 of 2001 [**Sakuntala and Others v. R.Gopal and Another - decided on 29.01.2017**], a similar issue was considered and this Court has held as follows:

"In a decision reported in 1992 ACJ 110 (**Usha Jhingran and others vs. Budhsen and others**), the claimants contended that the deceased died due to the accident, but did not produce any medical or other expert evidence to infer that death was the direct consequence of injuries received by the deceased in the accident. The injured remained unconscious in the hospital for about a year after the



accident and died, thereafter. The decision of the Tribunal dismissing the claim petition was reversed by the High Court and compensation was awarded".

Further, it is held that if there is no clear nexus between the injury and the consequential death, the claim petition is not maintainable and not otherwise.

12.In the instant case, Ex.P.7, Case Sheet has been analysed thoroughly in this regard. On perusal of Ex.P.7, it could be seen that immediately after the accident, the injured Chinnathambi was admitted in Pudukkottai Government Hospital on 04.04.2009 for the injuries sustained in the accident and he was discharged on 22.04.2009. Ex.P.7, Case Sheet, discloses that the deceased Chinnathambi had sustained fracture in left ilium. If there is no other evidence to show that the injured was suffering from any other incurable disease, the Tribunal can conclude that the cause of the death is due to the injuries sustained in the accident. As per Ex.P.7, the deceased Chinnathambi sustained fracture in the left ilium and he was not suffering from any other incurable disease and he was taken continuous treatment and therefore, the Tribunal has held that since he was in continuous treatment, the claim petition is maintainable and in view of the nexus between the injuries and the death, has awarded compensation.

13.After perusing the documents, i.e., Ex.P.2 and Ex.P.7, I am of the considered view that the finding rendered by the Tribunal, does not require any reconsideration or interference.

14.With regard to the quantum of compensation, the adoption of multiplier, notional income fixed by the Tribunal, deductions and the compensation awarded towards the other heads, appear to be just and reasonable. Hence, in this view of the matter, the award passed by the Tribunal does not require any interference and the Civil Miscellaneous Appeal is liable to be dismissed.

15.In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 22.08.2017, passed in M.C.O.P.No.147 of 2011 by the Motor Accident Claims Tribunal / Special Court for E.C. and N.D.P.S. Act Cases, Pudukkottai is confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

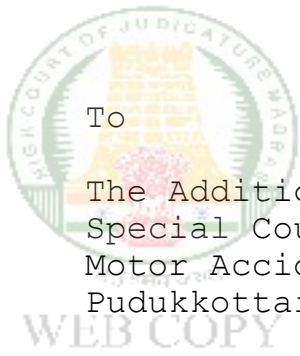
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/ /2022

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To

The Additional District Judge,
Special Court for E.C. & N.D.P.S. Act Cases/
Motor Accident Claims Tribunal /
Pudukkottai.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

JUDGMENT MADE IN
C.M.A(MD) No.589 of 2018
29.04.2022

SAR(CO)

GC(03.06.2022) 5P 4C