



C.M.A.(MD)No.53 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.10.2022

Pronounced on : 23.11.2022

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.53 of 2022

and

C.M.P.(MD)No.5836 of 2022

M/s.IFFCO Tokio General Insurance Company Ltd.,
Kingston Park, 2nd Floor,
No.19/1, Ramalinga Nagar,
Uraiyur, Trichy – 3.

...Appellant/2nd Respondent

Vs.

1. B.Nagarathinam

2. B.Vadivel

3. B.Manikandan

...Respondents 1 to 3/Petitioners

4. V.Iyyppan

...4th Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 07.07.2021 passed in M.C.O.P.No.1249 of 2014 on the file of the Special District Judge (Motor Accident Claims Tribunal), Trichirappalli by allowing this appeal.



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For Appellant : Mr.V.Sakthivel
For Respondents : M/s.T.A.Ebenezer for R1 to R3
No appearance for R4

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.1249 of 2014 dated 07.07.2021 on the file of the Special District Court (Motor Accident Claims Tribunal), Trichirappalli.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.7,18,850/- with interest at 7.5% per annum and costs to the respondents 1 to 3/claimants for the death of one Balakrishnan, who died consequent to an accident occurred on 10.02.2014, challenged the liability mulcted on it and the quantum of compensation awarded at, by the Tribunal.

3. Admittedly, the first respondent/first claimant is the wife and the respondents 2 and 3/claimants 2 and 3 are the sons of the deceased Balakrishnan.



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4. The case of the respondents 1 to 3/claimants is that on 10.02.2014 at about 07.00 p.m., when the deceased Balakrishnan was walking from East to West direction on Viralimalai to Manapparai road, just in front of the Primary Health Centre, a two wheeler bearing Registration No.TN-55-AA-7596 came from West to East direction in a rash and negligent manner without sounding and without observing the traffic rules to the extreme right side of the road and dashed against the pedestrian Balakrishnan, that due to the said accident, the said Balakrishnan had sustained serious injuries, that the injured Balakrishnan was immediately taken to Trichy Government Hospital and thereafter, he was admitted in Chennai Medical College and Research Centre, Irungalur, Trichy, that he was subsequently admitted in Theni Government Hospital, that despite treatment, he succumbed to the injuries on 18.04.2014 and that the accident was occurred only due to the rash and negligent driving of the two wheeler rider and hence, a case has been registered against the two wheeler rider in Crime No.27 of 2014 for the offences under Sections 279 and 337 IPC on the file of Viralimalai Police Station.

5. It is the further case of the respondents 1 to 3/claimants that the deceased Balakrishnan was doing stone breaking work and was earning Rs.10,000/- per month.



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6. The defence of the appellant/Insurer is that the deceased Balakrishnan had suddenly crossed the road from his left to right by using drugs, that the two wheeler rider, on seeing the sudden development, had sounded horn and took the Honda Shine to his extreme right side to avoid the accident, but inspite of his best efforts, the deceased Balakrishnan had proceeded in the same fashion and dashed against the Honda Shine two wheeler, that the accident was occurred only, due to the sudden crossing of the deceased Balakrishnan and that therefore, the appellant/Insurer is not liable for the claim.

7. It is the further case of the appellant/Insurer that the accident was occurred on 10.02.2014, but the injured Balakrishnan died on 18.04.2014, that there was no nexus between the accident and the death, that the death of the said Balakrishnan was natural and not due to the accidental injuries and that therefore, the appellant/Insurer is not liable to pay any compensation to the respondents 1 to 3/claimants.

8. During trial, the respondents 1 to 3/claimants have examined the respondents 1 and 2/claimants 1 and 2 as P.W.1 and P.W.2 respectively and two other witnesses Thiru.R.Subramanian and Doctor C.Subramani as P.W.3 and P.W.4 respectively and exhibited 9 documents as Ex.P.1 to Ex.P.9. The



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appellant/Insurer has examined two witnesses Thiru.Chellapandian and Thiru.Aravind Kumar as R.W.1 and R.W.2 respectively and adduced no documentary evidence. Two witness documents were exhibited as Ex.X.1 and Ex.X.2.

9. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award dated 07.07.2021 holding that the two wheeler rider was responsible for the accident, directed the appellant/Insurer to pay compensation of Rs.7,18,850/- with interest and costs. Aggrieved by the said award, the appellant/Insurer has come forward with the present appeal.

10. The points that arise for consideration are :

(i) Whether the Tribunal erred in rendering a finding that the injured Balakrishnan had died due to accidental injuries, despite showing that postmortem was not conducted on the body of the deceased Balakrishnan and that the deceased Balakrishnan, who was suffering from Tuberculosis, had died due to the said disease and that there was no pleading or evidence to show that P.W.4-medical officer had treated the injured Balakrishnan before his death?



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(ii) Whether the quantum of compensation awarded by the Tribunal is just and proper and is in accordance with law?

Point Nos.(i) and (ii) :

11. The appellant/Insurer, though in the memorandum of appeal, challenged the finding of the Tribunal that the two wheeler rider was responsible for the accident, the same was not pressed into service. But the learned counsel appearing for the appellant/Insurer would strongly contend that in the absence of any postmortem report, it cannot be held that the injured Balakrishnan died, due to accidental injuries, more so when the death took place after two months of the accident.

12. Admittedly, there is no postmortem report on record to show that the death took place, due to accidental injuries. But the wife and son of the deceased Balakrishnan have stated on oath that the death was due to accidental injuries. Though P.W.1-wife of the deceased Balakrishnan was subjected to cross-examination, nothing was elicited by the other side in their favour and her evidence that her husband had died due to accidental injuries was not at all shaken, during her cross-examination. P.W.2-son of the deceased Balakrishnan, who had witnessed the occurrence, was subjected to cross-examination, but



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there was no cross-examination in this regard and as such, evidence of P.W.2 remained unshaken.

13. It is pertinent to note that the appellant/Insurer has not produced any evidence or materials to show that the version of P.W.1 and P.W.2 that the death of Balakrishnan took place due to accidental injuries, cannot be disbelieved.

14. The learned counsel appearing for the appellant/Insurer has relied on the following decisions in support of their contentions,

(i) 2017 (2) TN MAC 129 (DB) :

New India Assurance Co. Ltd., Chennai vs. S.Prema and others

“MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 166 & 169 – Proceedings before Claims Tribunal – Summary proceedings – Scope of – Scrutiny of evidence cannot be done summarily or mechanically – Facts pleaded to be proved with evidence not only on basis of oral testimony but should also be corroborated – Case of Claimant that deceased died due to injuries suffered in accident – Accident took place on 13.6.2007 – Deceased died in Government General Hospital on 19.11.2010 – Claim Petition filed in year 2012 – Medical evidence not connecting injuries to death – Evidence of PW3/Doctor that due to continuous medication for 3 yrs. there is possibility of death – Tribunal solely



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on basis of testimony of PW3/Doctor holding that death was due to injuries – Held, Tribunal grossly erred in arriving at such a finding in absence of any documentary evidence.”

(ii) 2019 (1) TN MAC 758 :

New India Assurance Co. Ltd., vs. S.Devaki and others

“MOTOR VEHICLES ACT, 1988 (59 of 1988), Sections 166 & 168 – Whether death of deceased due to injuries suffered in accident – Legality of Award passed by Tribunal – Deceased, as per Case-sheet/Ex.P5 suffered crush and fracture injuries in left foot in accident that occurred on 18.6.2006 – Treated as inpatient from 18.6.2006 to 2.7.2006 and thereafter as outpatient and died after 29 months on 14.11.2008 – Doctor/PW4 issued Probability Certificate/Ex.P6 indicating accidental injury as a cause of death – PW4 opined that death probable due to septicemia – As per Ex.P5, fracture injury treated conservatively and raw area covered with skin grafting – No documents to show nature of treatment taken subsequently and as to how injury caused death – Categorical statement of PW4 in cross-examination that at time of discharge, wound was raw and unhealed, therefore, death was due to non-healing of wound – Said opinion not supported by any document – In absence of any positive material indicating non-healing of wound or septicemia, Ex.P6 cannot be acted upon – Evidence of PW4, who issued Ex.P6, not inspiring confidence of Court – Finding of Tribunal that deceased died due to accidental injury, liable to be set aside.”

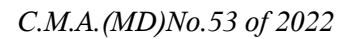


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15. In the first decision case, the accident was occurred on 13.06.2007 and the injured died on 19.11.2010 after three years. In the second decision case, the accident was occurred on 18.06.2006 and the injured died on 14.11.2008 after 29 months. In the absence of any positive material to show that the injured had died due to accidental injuries, this Court has set aside the finding of the Tribunals.

16. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Ramathal vs. Managing Director, Cheran Transport Corporation*** reported in ***AIR 2004 SC 3445***, wherein, the accident was occurred on 14.01.1991 and after hospitalization for one week, he died on 26.02.1992 after one year and the relevant passage is extracted hereunder:-

“15. Unfortunately, the High Court did not discuss the materials on record in detail. It is not in dispute that deceased was an indoor patient from 14.01.1991 to 21.01.1991. He thereafter was being treated in Government Hospital, Palladam. He died there. The medical certificate shows that the cause of the death was due to the primary disease hypoxic encephalopathy and immediate cause of death was due to cardiorespiratory arrest. The doctor examined on behalf of the claimants categorically stated that the



18. The learned counsel appearing for the appellant/Insurer would contend that the respondents 1 to 3/claimants have not produced the treatment



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records taken at Trichy Government Hospital and subsequently, at Theni Government Hospital and Chennai Medical College and Research Centre, Irungalur, Trichy and that they have not offered any reason or explanation for non-production of the records. But the learned counsel appearing for the respondents 1 to 3/claimants would submit that they have sent for medical records from Trichy Government Hospital and the same have been exhibited under Ex.P.8 and outpatient slip and discharge summary issued at Theni Government Hospital are available under Ex.P.5 and the records of Chennai Medical College and Research Centre, Irungalur, Trichy, are available under Ex.P.3.

19. It is the specific contention of the respondents 1 to 3/claimants that due to the accident, the deceased Balakrishnan had sustained fractures over the right thigh, right leg femur, left knee, left femur and right shoulder, that he had lost lower line five teeth, that injuries over the back head, right wrist, right hip, left toe and right eye, apart from other injuries. As already pointed out, it is evident from the records that after the accident, the injured Balakrishnan was admitted as inpatient in Trichy Government Hospital on 10.02.2014 and was discharged on 26.02.2014 and subsequently, he was admitted in Chennai Medical College and Research Centre, Irungalur, Trichy, on 26.03.2014 and was



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discharged on 27.03.2014 and that he was admitted as inpatient on 02.04.2014 at Theni Government Hospital and was discharged on 11.04.2014.

20. It is the specific case of the respondents 1 to 3/claimants that the injured Balakrishnan was given treatment in their home itself from 12.04.2014 till 18.04.2014, the date of which he succumbed to injuries and that P.W.4-Doctor had treated the said Balakrishnan, during the said period.

21. P.W.4, in his evidence, would say that he had treated the said Balakrishnan from 12.04.2014 to 18.04.2014 for his bed sores, which was caused by the injuries occurred in the accident, that he had seen the said Balakrishnan lastly on 18.04.2014 and he was in drowsy and unconscious with high grade fever and the complaint of not passing of urine and that he gave one antibiotic injection and asked them to take him to hospital, but before reaching the hospital, he was informed that the said Balakrishnan died on the way. Though P.W.4 was subjected to cross-examination at length, nothing was elicited by the appellant/Insurer side in their favour. Even assuming for arguments sake that P.W.4 had not treated the deceased Balakrishnan, even according to the records, he was taking treatment till 11.04.2014 at Theni Government Hospital.



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22. Considering the evidence of P.W.1, P.W.2 and P.W.4 and the medical records available, the same would clearly indicate that the injured condition worsened with the passage of time, to which he ultimately succumbed to the injuries and as such, the finding of the Tribunal cannot be found fault with.

23. Now turning to the quantum of compensation, the appellant/Insurer has not specifically challenged the quantum of compensation arrived at, by the Tribunal.

24. The Tribunal, considering the fact that the accident was occurred in the year 2014 and the age of the deceased at 46 years, has fixed the monthly income at Rs.4,500/-. As per the decision of the Hon'ble Supreme Court in *National Insurance Company Ltd., vs. Pranay Sethi and others* reported in *2017 ACJ 2700*, has rightly added 25% of the income towards future prospects and as per the decision of the Hon'ble Supreme Court in *Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another* reported in *AIR 2009 SC 3104*, has rightly deducted 1/3 of the income towards personal and living expenses of the deceased and rightly applied the multiplier 13 and arrived the compensation at Rs.5,85,000/- towards loss of dependency.



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25. The Tribunal has awarded Rs.35,000/- each towards loss of consortium, Rs.10,000/- for funeral expenses, Rs.10,000/- for loss of estate and Rs.7,000/- for transportation. Though the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others*** reported in (2018) 18 SCC 130 and in ***New India Assurance Company Ltd., Vs. Smt.Somwati and others***, passed in ***Civil Appeal No.3093 of 2020 and batch, dated 07.09.2020***, has permitted the spousal consortium to be awarded to the surviving spouse, parental consortium to be awarded to the children upon the premature death of their parents and filial consortium to be awarded to the parents for the loss of their children at the same amount that is fixed in ***Pranay Sethi's case***. Hence, the respondents 1 to 3/claimants are entitled to get Rs.40,000/- each towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate under the conventional heads, but the respondents 1 to 3/claimants have not disputed the amounts awarded under the heads of loss of consortium, loss of estate and funeral expenses.

26. Considering the above, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances, this Court, further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.



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27. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 07.07.2021 passed in M.C.O.P.No.1249 of 2014 on the file of the Special District Court (Motor Accident Claims Tribunal), Trichirappalli, is confirmed. The appellant/Insurer is directed to deposit the entire award amount with accrued interests and costs to the credit of M.C.O.P.No.1249 of 2014 on the file of the Special District Court (Motor Accident Claims Tribunal), Trichirappalli, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1 to 3/ claimants 1 to 3 are permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

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Index :yes/No

Internet:yes/No

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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in

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