



C.M.A.No.1650 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1650 of 2023

- 1.Selvi
- 2.Buveneswari
- 3.Arulmurugan

....Appellants/Petitioners

Vs.

- 1.Rajabathar
- 2.The United India Insurance Company Ltd.,
Regional Office, Third Party Hub, 35,36 & 37 AR Plaza,
45, feet road, Balaji nagar, Puducherry.

...Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decretal award passed by the learned I Additional District Judge, Tindivanam (Motor Accident Claims Tribunal) dated 29.03.2022 in M.C.O.P.No.274 of 2016.

For Appellants : Mr.S.Udhayakumar



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For Respondents : R1-Exparte
R2 - Mrs.I.Malar

J U D G M E N T

The claimants have preferred the above appeal seeking enhancement of compensation awarded by the Tribunal.

2. The appellants/claimants had filed the claim petition stating that on 02.04.2016 at about 9:00 A.M, while the deceased Mr.Shanmugavelu was riding his motor cycle bearing Reg.No.TN-32-Q 6105 from Puducherry Road to Tindivanam bazar, a bus bearing Reg.No.TN 16 B 6777, belonging to the first respondent and insured with the second respondent herein, came in the same direction and hit the vehicle of the deceased from behind, as a result of which, the deceased sustained fatal injuries.

3. The first respondent remained ex-parte before the Tribunal.

4. The second respondent/Insurance company, filed a counter stating



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that the accident did not take place due to the negligence of the driver of the bus; that the first respondent vehicle was not insured with them; and that in any case, the claim made by the appellants was excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellants examined P.W.1 to P.W.3 and marked fourteen documents as Exs.P1 to P14. The second respondent neither examined any witness nor marked any document.

6. The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the negligence of the driver of the first respondent's vehicle and directed the second respondent being the insurer of the offending vehicle, to pay a sum of Rs. 1,13,752/- as compensation to the appellants.

7. The learned counsel for the appellants submitted that though there



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was nexus between the accident and death, the Tribunal had erroneously held that there was no nexus and had awarded meagre compensation of Rs.1,13,752/-, which included the Medical Expenses for Rs.1,08,752/-, and Rs.5000/- towards Transportation Charges. The learned counsel further submitted that even assuming that there is no nexus between the accident and the death, the Tribunal ought to have granted compensation under the other conventional heads, as per the Judgement of the Hon'ble Apex Court in ***Oriental Insurance Co. Ltd Vs. Kahlon @ Jasmail Singh Kahlon (deceased)*** reported in ***2021 (2) TN MAC 305 (SC)*** which has followed by the Division Bench of this Court in ***HDFC ERGO General Insurance Co. Ltd., Vs. Sugasini and others*** reported in ***2023 (1) TN MAC 375 (DB)***.

8. Since the first respondent remained ex-parte before the Tribunal, the learned counsel for the appellants made an endorsement to dispense with notice to the first respondent. Hence, notice to the first respondent is dispensed with.



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9. The learned counsel for the second respondent, *per contra*, submitted that in the absence of any evidence to show that there was nexus between the accident and the death, the Tribunal was right in holding that the appellants are not entitled for compensation for the death of the deceased; that the Tribunal had accepted the Medical Bills submitted by the appellants and had awarded just and reasonable compensation and hence, no interference is called for and prayed for dismissal of the appeal.

10. Heard the learned counsel for the appellants as well as the second respondent and perused the materials available on record.

11. On perusal of the records, this Court finds that the Tribunal after considering the evidence on record held that the appellants had not established the nexus between the accident and the death. The nature of injuries and the period of treatment were considered by the Tribunal to hold that there was no nexus. It is seen from the finding that as per Ex.P6/the Discharge Summary issued on 17.04.2016, it was stated that the term



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“Wound Healthy”. The Discharge Summary/Ex.P.6 shows that the deceased had suffered *DM/Grade 2 Compound Fracture both bone (rt) leg*. No other injury or ailment was referred to in the Discharge Summary. In the light of the above facts and the evidence on record, this Court is of the view that the Tribunal was right in holding that there was no nexus between the accident and the death and no interference is called for in the said finding.

12. However, the question is whether the appellants are entitled to compensation under the other conventional heads even if the nexus is not established. The Division Bench of this Court in ***HDFC ERGO General Insurance Co. Ltd Vs. Sugasini and others*** (cited supra) by following the Judgment of the Honourable Apex Court in ***Oriental Insurance Co. Ltd Vs. Kahlon @ Jasmail Singh Kahlon (deceased)*** (cited supra) held that even if death is unrelated to the accident, the claim under the other conventional heads cannot be denied.



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13. In view of the above legal position, this Court is of the view that the

appellants would be entitled to compensation under the heads:- (a)

Loss of Income, (b) Attender Charges, (c) Extra Nourishment, (d)

Damages to Clothes and Articles, and (e) Doctors Fee. Admittedly, the

deceased was working as a driver in Tindivanam Municipality and was

earning a salary of Rs.28,000/-, per month and the pay slip was marked as

Ex.P13. Therefore, one month salary i.e.28,000/- is awarded under the head

Loss of Income. Further, the deceased was in the Hospital for twelve days and

hence, it would be just and reasonable to award Rs.20,000/- towards

Attender Charges. Considering the age of the deceased, the period of

treatment and nature of injuries, it would be just and reasonable to award

Rs.30,000/- towards Extra Nourishment, Rs.5,000/- towards Damages to

Clothes and Articles and Rs.30,000/- towards Doctors Fee. Further the sum

of Rs.5,000/- awarded by the Tribunal towards Transportation charges is

meagre and the same is enhanced to Rs.15,000/-. The award under the head

Medical Expenses is reasonable and hence, the same is confirmed. Thus, the

compensation awarded by the Tribunal is modified and enhanced from



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Rs.1,13,752/- to Rs.2,36,752/-, the break-up details are as follows:-

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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Medical Expenses	1,08,752/-	1,08,752/-	Confirmed
2.	Transportation Charges	5,000/-	15,000/-	Enhanced
3.	Loss of Income	---	28,000/-	Granted
4.	Attender Charges	---	20,000/-	Granted
5.	Extra Nourishment	---	30,000/-	Granted
6.	Damages to Clothes and Articles	---	5,000/-	Granted
7.	Doctor's Fee	---	30,000/-	Granted
	Total	1,13,752/-	2,36,752/-	Enhanced by Rs.1,23,000/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,13,752/- is hereby enhanced to Rs.2,36,752/-. The second respondent



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/Insurance Company is directed to deposit the enhanced award amount, along with interest and costs (excluding the default period if any) less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of a copy of this Judgment. On such deposit, the appellants are permitted to withdraw their share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn, on the basis of apportionment fixed by the Tribunal. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

29.08.2023

dk

Index: Yes/No

Neutral Citation: Yes / No

To

1. The I Additional District Judge,
Motor Accident Claims Tribunal,
Tindivanam.
2. The Section Officer,
VR Section,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J.

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