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C.M.A.No.1654 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM

THE HON'BLE Mr. JUSTICE J.SATHYA NARAYANA PRASAD

C.M.A.No.1654 of 2018

Karpagam (Died)

1.M.Pachiappan

2.Minor Jhansi Rani

3.Minor Kausalya

[**The respondents 2 and 3 are represented by their father and the natural guardian and next friend]

... Appellants

Vs.

1.C.Mohanam

(**Remained exparte before the lower Court notice may be dispensed with)

2.The New India Assurance Company Ltd.,

Rep by Divisional Manager,

No.1, Officers Line, Vellore.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to allow the present appeal for the restricted claim of Rs.4,00,000/- with interest as additional compensation.



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For Petitioners : Mr.P.Satheesh Kumar

For Respondents : Mr.R.Sivakumar, for R2
R1 – Exparte in lower Court itself

JUDGEMENT

This Civil Miscellaneous Appeal is filed challenging the Judgment and decree passed in MCOP.No.179 of 2006 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Arni, awarding a compensation of Rs.15,000/- and seeking additional compensation of a sum of Rs.4,00,000/- along with interest.

2. The facts of the case in a nutshell are as follows:

On 11.09.2006, at about 12:00 mid noon, the first claimant along with her relatives have gone to Walaja Town to worship their family deity. While the first claimant along with other relatives were proceeding in the mud road from West to East direction, a LMV Santro Car bearing registration No.TN22-AE-6364 owned by the first respondent and insured with the second respondent was coming in the opposite direction at great speed. The driver of the vehicle drove the car in a rash and negligent manner and



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dashed against the petitioner/claimant and other persons, due to which the claimant sustained several injuries all over the body, including the fracture of thigh, and other parts of the body. There is no fault or negligence on the part of the claimant. Hence, the first respondent being the owner of the vehicle and the second respondent being the insurer of the vehicle are vicariously liable to pay compensation to the first claimant. The first claimant was hale and healthy and was aged about 30 years only and she is doing coolie work and used her income for the welfare of the family. Since the first claimant sustained great loss and hardship, due to permanent disability, the claimants are suffering under poverty. The first claimant namely Karpagam died on 07.01.2007. The claim petition was filed on 12.12.2006 claiming the compensation of a sum of Rs.5,00,000/- from the respondents. The Tribunal awarded only a sum of Rs.15,000/-. Aggrieved by this, the appellants have filed this appeal before this Court.

3. The learned counsel for the appellants submitted that the accident took place on 11.09.2006 and the first claimant was hospitalised and discharged on 03.12.2006. The claim petition was filed subsequently on



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12.12.2006. During the pendency of the claim petition before the Tribunal, the first claimant, namely Karpagam, died on 07.01.2007. He further submitted that the Tribunal arrived at conclusion that the injuries sustained by the first claimant was only minor injuries and awarded a sum of Rs.15,000/- towards compensation against the claim amount of a sum of Rs.5,00,000/-. He also submitted that the trial Court having found that the accident was caused only due to the rash and negligent driving of the vehicle owned by the first respondent and insured with the second respondent awarded only a paltry sum of Rs.15,000/- towards compensation and prays to allow the above appeal by enhancing the compensation to a sum of Rs.4,00,000/- along with interest.

4. The learned counsel appearing for the appellant relied on the judgement of the Apex Court in the case of ***The Oriental Insurance Company Limited vs. Kahlon @ Jasmail Singh Kahlon (deceased) through his legal representative Narinder Kahlon Gosakan and another*** in ***Civil Appeal No.4800 of 2021*** and the judgement of this Court in the case of ***Oriental Insurance Co. Ltd., rep by its Divisional Manager vs.***



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N.Meenal, Minor N.Meenakshi and Minor N.Murugesan (minors represented by mother and natural guardian first respondent) in C.M.A.No.1667 of 2003 & C.M.P.No.10766 of 2003.

5. The learned counsel appearing for the second respondent submitted that no medical officer was examined to substantiate or prove the nature of injuries sustained by the deceased, namely Karpagam. The trial Court based on the oral and documentary evidence, arrived at conclusion that the injuries sustained by the deceased Karpagam is only minor injuries and not grievous in nature. Hence, the Tribunal has rightly awarded compensation of Rs.15,000/- to the respondents and does not warrants any interference of this Court.

6. The learned counsel appearing for the second respondent relied on the Division Bench judgement of this Court in the case of ***Branch Manager, Oriental Insurance Co.Ltd., vs Manohar (deceased) through LRs*** reported in ***2018 ACJ 1035***. The relevant portion of the said order is extracted hereunder:



“14. The next question to be considered is what should be the quantum of compensation to be awarded. The plain meaning of the maxim 'action personalis moritur cum persona' is that 'a personal action dies with the parties to the cause of action.' The above said maxim is an invention of English law. In Girija Nandini Devi vs. Bijendra Narain, AIR 1967 SC 1124, the Supreme Court observed as hereunder:

“The maxim actio personalis moritur cum persona means a personal action dies with the person has a limited application. It operates in a limited class of actions ex delicto such as actions for damages, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages ex delicto, and does not fall within the enumerated classes. Nor is such that the relief claimed being personal could not be enjoyed after the death or granting it would be nugatory.”

15. The maxim actio personalis moritur cum persona relates only to the personal injury, pain and suffering experienced by the deceased on account of injuries and it cannot be extended to the loss to estate of the deceased. Reference can be had to the decision of this Court in Thailammai vs. A.V.Mallayya Pillai, 1981 ACJ 185



(Madras), wherein this Court held that the cause of action in respect of damages to the estate of the deceased survives and it is passed over to the legal representatives/dependants.

24. In the light of the above discussion and decisions, this Court is of the view that the Claims Tribunal erred in arriving at the conclusion that the death occurred due to the injuries. There is no causa causans, which as per Black's Law Dictionary is "the immediate cause; the last link in the chain of causation". Legal representatives can at best be awarded compensation for the expenses incurred and we quantify the same as follows:

*Fixing the monthly income of the injured as Rs.6,000 and taking note of the injury, elbow fracture, it could be deduced that the injured would have been immobilised, at least for some time, say, for instance, three months. Hence, a sum of Rs.18,000 (Rs.6,000 * 3) is awarded under the head 'loss of income'. There are no detailed medical records, except Exh.P2, wound certificate, Exh.P3, medical sheet and Exh.P4, graphic chart, indicating that Manohar would have sustained a fracture. Though no medical records have been filed to prove the medical expenditure incurred, considering the nature of injuries, a sum of Rs.5,000 under the head 'medical expenditure', would be just and reasonable. Rs.5,000 is awarded for transportation. A sum of Rs.1,000*



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each is awarded under the heads 'nutrition' and 'damage to clothes'. In all, a sum of Rs.30,000 is awarded with interest at the rate of 7.5 per cent per annum from the date of claim till deposit and the same is apportioned as hereunder:

<i>Loss of income during the period of treatment at Rs.6,000 per month for three months</i>	<i>Rs.18,000/-</i>
<i>Medical Expenses</i>	<i>Rs.5,000/-</i>
<i>Transportation</i>	<i>Rs.5,000/-</i>
<i>Nutrition</i>	<i>Rs.1,000/-</i>
<i>Damage to clothes</i>	<i>Rs.1,000/-</i>
<i>Total</i>	<i>Rs.30,000/-</i>

7. Heard the learned counsel for the appellant and the second respondent and perused the material documents available on records.

8. In the present case, it is proved beyond doubt before the Tribunal that the accident had been caused due to the the rash and negligent driving of the vehicle owned by the first respondent. No doubt that the deceased Karpagam has sustained injuries due to the accident. There is no proof to prove that she was admitted in the Government Hospital in Vellore as claimed by the appellants and no medical records pertaining to the admission or discharge was filed before the Tribunal. Since there is no



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documentary proof to show that the deceased underwent treatment, the Tribunal arrived at the conclusion that the injuries are minor in nature and the same is sustainable and does not warrant any interference by this Court. If the deceased was admitted in the hospital, definitely the medical officer, who treated the deceased would have been examined during the trial before the trial Court. In the absence of that, it is a crystal clear evident that the deceased was not admitted in the hospital for any kind of treatment.

9. It is an admitted fact that the deceased Karpagam was working as a coolie and aged of 30 years old and spent her income for the welfare of the family. In this case, it is pertinent to note that the deceased first claimant has met with the above accident on 11.09.2006 and died on 07.01.2007 and there is no proof or evidence to show that she died only due to the injuries sustained in the accident, occurred nearly four months before. If the injuries sustained was of grievous in nature, it will subsequently result in death of the person or permanent disability and the deceased could have been subjected to treatment by the Doctors. In this case, the Tribunal has come to the conclusion that the injuries are minor in nature, since there is no proof that the deceased died on 07.01.2007 due to the accident occurred on



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11.09.2006.

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10. Though, judgements of the Hon'ble Apex Court and this Court were referred to by the learned counsel for the appellant, the same are not applicable to the present case on hand, for the reason that in that case, the disability was assessed at 100% and the facts of this case is entirely different.

11. However, considering the age, nature of job, income and the minor children of the deceased namely Karpagam, this Court is inclined to interfere with the award passed by the trial Court/Tribunal. Since, the appellants 2 and 3 are minors, their shares of amount shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Bank, till they attain majority and the 1st appellant is permitted to withdraw interest accruing on such deposit once in three months. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted.
1	Loss of earnings	Nil	Rs.20,000/-	Enhanced
2	Partial Loss of Earnings	Nil	Rs.20,000/-	Enhanced
3	Transport to Hospital	Nil	Rs.3,000/-	Enhanced



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S.No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted.
4	Extra Nourishment	Nil	Rs.5,000/-	Enhanced
5	Damages to clothing and articles	Nil	Nil	Confirmed
6	others	Nil	Nil	Confirmed
7	Compensation for pain and suffering	Nil	Rs.25,000/-	Enhanced
8	Compensation of continuing as permanent disability, if any	Nil	Nil	Confirmed
9	Compensation for the loss of earning power	Rs.15,000/-	Rs.30,000/-	Enhanced
	Total	Rs.15,000/-	Rs.1,03,000/-	Enhanced by
	50% of the award amount	Rs.7,500/-	Rs.51,500/-	Rs.88,000/- (Rs.1,03,000/- - Rs.15,000/-)

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the total compensation awarded by the Tribunal at Rs.15,000/- is hereby enhanced to Rs.1,03,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are directed to deposit 50% of the award amount, (i.e., Rs.51,500/-) now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of



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receipt of a copy of this Judgement, to the credit of MCOP.No.179 of 2006 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Arni.

On such deposit, 1st appellant is permitted to withdraw his share of the award amount, now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. No costs.

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

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To

The Motor Accident Claims Tribunal/Subordinate Court,
Arni.



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J.SATHYA NARAYANA PRASAD.J.,

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