IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2645 of 2019

N.Perumal (Died)
1.Govindammal
2.P.Thirumalai
3.Rekha
4.P.Suthakar
5.P.Suvalatha ... Appellants

Vs.

1.G.Ravi

2.Reliance General Insurance Co. Ltd.,
Rai's Tower, 2nd Floor,
Plot No.2054, 2nd Avenue,
Anna Nagar, Chennai – 40. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 04.08.2018 made in M.C.O.P.No.7841 of 2013 on the file of Motor Accident Claims Tribunal, (III Small Causes Court), Chennai.

For Appellants : Mr.K.Varadhakamaraj

For Respondents : Died (Steps due) [R1]
Mr.S.Arun Kumar [R2]

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JUDGMENT

The claimants are before this Court seeking an enhancement of the award passed by the Motor Accident Claims Tribunal, (III Small Causes Court), Chennai, in M.C.O.P.No.7841 of 2013, dated 04.08.2018.

2. The facts in brief are as follows :-

On 29.09.2013 at about 15.00 hrs, the deceased Perumal was riding his motorcycle bearing Reg.No.TN 07 Y 9021 proceeding at East Coast Road, near Perumal chery bridge, Kanchipuram District, at that time, a lorry bearing Reg.No.TN 25 AA 1743 driven by its driver in a rash and negligent manner, came from behind and hit the motorcycle in which the deceased was travelling. Due to which, the deceased sustained grievous injuries and was admitted as inpatient at Rajiv Gandhi Government General Hospital, Chennai. Thereafter, the deceased was in continuous treatment till 15.01.2014 and on which date, he succumbed to the said injuries. Though initially the claim petition was filed by the deceased before his death, however, after his death, the legal heirs of the deceased have impleaded themselves in the claim petition and have contested the matter claiming compensation for the death of the deceased.

3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked 10 documents viz., Ex.P.1 to Ex.P.10. On the side of the respondents, they have examined one witness viz., R.W.1 and no documents were marked. After considering all the oral and documentary evidence, the Tribunal, awarded a sum of Rs.1,16,200/- as compensation to the claimants. Not satisfied with the same, the appellants/claimants are before this Court.

4. The learned counsel appearing for the appellants/claimants submitted that, the Tribunal has categorically held that the accident had happened due to the rash and negligent driving by the driver of the lorry and inspite of the fact that P.W.2, who has given continuous treatment to the deceased had opined that the deceased died due to the complications arising out of the head injury. In the absence of any evidence to disclose that the deceased had not died due to the complications of the head injury, the finding arrived at by the Tribunal that the deceased had not died due to the complications of the injuries sustained in the accident is wholly impermissible. Therefore, he submitted that this Court may set aside the

finding recorded by the Tribunal and grant appropriate compensation to the claimants.

5. Per contra, the learned counsel appearing for the second respondent/insurance company submitted that, the Tribunal, based on the evidence of P.W.2, doctor, who had initially given treatment to the deceased coupled with the evidence of R.W.1, the doctor who had given treatment to the deceased after his discharge from the hospital, who has conclusively submitted that the injuries sustained by the deceased were not cause for his death, the Tribunal has come to the conclusion that the death was not as a result of the accident and had negatived the claim for compensation, which does not require any interference.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

7. The factum and manner of the accident is not in dispute and the fact that the accident had happened due to the rash and negligent driving by

the driver of the first respondent's vehicle is also not is dispute. The only issue is with regard to the death of the deceased, whether it is on account of the injuries sustained in the accident which had resultantly taken its effect causing the death of the deceased after four months or was it due to the old age. In this regard, while the claimants rely on the evidence of P.W.2, the doctor who had initially treated the deceased, the respondents rely on the evidence of R.W.1, who had treated the deceased after his discharge. It is the evidence of P.W.2, the doctor who treated the deceased that the deceased had died due to the complications arising out of the head injury. In fact, it is the further deposition of P.W.2 in cross examination, that the deceased was surviving on ventilator support when he was in the hospital and that he was discharged after 53 days. It is the further evidence of P.W.2 that he cannot opine as to the length of period the deceased would have survived after discharge. In this background, R.W.1, who was the examined on behalf of the insurance company, who has given treatment to the deceased after his discharge from the hospital as stated in his deposition that the deceased had recovered from the injuries. However, in cross examination, R.W.2 he had deposed that the cause of the deceased would be spelt out only on the basis of his last treatment records. In this background, the Tribunal has relied merely upon Ex.P.2 and Ex.P.3 to hold that in the absence of the last treatment records being provided by the claimants, the deceased could not be held to have died due to the complications arising on account of the head injuries suffered during the accident.

8. Though such a finding has been rendered by the Tribunal, however, the Tribunal has lost site of a crucial fact which stares writ large on the finding recorded by the Tribunal. It is deposition of R.W.1 that the deceased was taking treatment after his discharge with R.W.1. So R.W.1 was the doctor who was treating the deceased and who would be well aware of the health condition and complications of the deceased. Since the treatment itself has been given by R.W.1, this Court is at a loss to understand as to the deposition of R.W.1 who has spoken that he cannot give any opinion about the cause of death without looking at the last treatment records. If R.W.1 after the discharge of the deceased had given treatment to the deceased, he would have been the last doctor who would have treated the deceased after discharge. However, the deposition of R.W.1 is not clear as to whether he alone had treated the deceased or the deceased was taking treatment elsewhere. However, R.W.1 has stated that

the deceased had not sustained injuries which are fatal in nature in the accident, which is contra to the deposition of P.W.2, who has stated that the deceased had died due to the complications arising out of the head injury. When it is the categorical deposition of P.W.2 that the deceased was thriving on ventilator support when he was admitted after the accident, this Court is at a loss to understand as to how the doctor R.W.1 would depose to the extent that the injuries sustained in the accident by the deceased were not fatal in nature. In such a back drop, placing reliance on the evidence of R.W.1 to negative the deposition of P.W.2, who was the doctor who had treated the deceased at the first instance when he was admitted immediately after the accident. This Court would definitely have to give no credibility to the evidence of P.W.2, who is a government doctor than that of R.W.1, who was not aware of the complications of the deceased at the earliest point of time. Therefore, taking into consideration the evidence of P.W.2 is of the evidence of R.W.1 and considering the legislative intent behind the Motor Vehicles Act, necessarily this Court has to hold that the deceased had died due to complications arising out of the injuries suffered by him in the accident, which was caused due to the rash and negligent driving by the driver of the first respondent's vehicle, which was insured with the second respondent and therefore, the second respondent/insurance company is liable to compensate the claimants.

9. The Tribunal, by arriving at a conclusion that the deceased had not died due to the consequences of the accidental injuries, had awarded following compensation :

S.No.	***Description***	***Amount (in Rs.)***
1	Extra Nourishment	50,000/-
2	Medicine	10,000/-
3	Conveyance	50,000/-
4	Attenders Charges	6,200/-
	Total	**1,16,200/-**

10. Since this Court had arrived at a conclusion that the deceased had died due to the complications arising out of the head injury suffered by the deceased in the accident, this Court is inclined to award compensation to the claimants by adopting the multiplier method. It is claimed by the claimants that at the time of death, the deceased was working as a Driver and earned a sum of Rs.15,000/- per month. It has been the view of the courts that even a housewife is entitled to monthly income to be fixed for

the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** fixing a notional income of Rs.10,000/- and adding future prospects at 25%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the total income per month is quantified at Rs.12,500/-. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.8,333/- per month and the deceased being aged about 50 years, as evidenced from the records, adopting the multiplier of 11 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is arrived at Rs.8,333/- * 12 * 11 = Rs.10,99,956/-, which is worked out as follows :

Loss of Income	***Amount in Rs.***
Notional income (Per month)	10,000
Add: Future Prospects (Rs.10,000 x 25%) (Per month)	2,500
	12,500
Less: Personal expenses (1/3rd) (Rs.12,500/- x	4,167

Loss of Income	*Amount in Rs.*
1/3rd) (Per month)	
	8,333
Notional income (per annum) (Rs.8,333/- x 12)	99,996
Multiplier	11
Total	**10,99,956**

11. Further, this Court awards a sum of Rs.40,000/- each to the claimants towards loss of love and affection. A sum of Rs.15,000/- is awarded under the heads funeral expenses and loss of estate respectively.

12. In view of the above, this Court awards the following compensation to the claimants :

S.No.	*Description*	*Awarded by this Court (Amount in Rs.)*
1	Loss of income	**10,99,956/-**
2	Loss of love and affection	**2,00,000/-**
3	Funeral expenses	**15,000/-**
4	Loss of estate	**15,000/-**
	Total	**13,29,956/-**

13. Accordingly, the appeal is allowed and the impugned award of

the Tribunal is modified enhancing the compensation amount from **Rs.1,16,200/-** to **Rs.13,29,956/-**. The second respondent/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.7841 of 2013 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. From the above said award amount, the appellants 1, 3 and 5 are entitled to Rs.3,32,489/- each, the second appellant is entitled to Rs.1,66,245/- and the fourth appellant is are entitled to Rs.1,66,244/-. On such deposit being made, the Tribunal is directed to transfer the award amount as apportioned above directly to the bank accounts of the appellants/claimants through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation. The appellants/claimants are directed to pay necessary additional Court fee on the enhanced compensation amount. No costs.

22.11.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No

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M.DHANDAPANI, J.,

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To

1.The Motor Accident Claims Tribunal, (III Small Causes Court), Chennai.

2.The Section Officer, V.R.Section, High Court, Madras.

C.M.A.No.2645 of 2019

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