

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 17.08.2023

CORAM :

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Civil Miscellaneous Appeal No. 897 of 2023

1.Nagammal

2.Rama

3.I. Murugesan

... Appellants

Versus

1.M/s.Royal Enfield,  
No. 5284, Thiruvottriyur High Road,  
Thiruvottriyur, Chennai – 600019.

2.United India Insurance Co.Ltd.,  
Motor third party Hub,  
Silingi Building, 4<sup>th</sup> floor,  
No. 134, Greams Road,  
Chennai – 600006.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 10.01.2023 in M.C.O.P. No. 4704 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1 to deal with MCOP Cases, Small Causes Court, Chennai.

For Appellant : Mr. R. Nalliyappan.

For Respondents : Mr. K. Swaminathan for R2.

Mr. T. Madhumitha for

M/s. King & Partridge for R1.

**J U D G M E N T**

The appeal has been filed by the appellant challenging the award passed by the Tribunal in M.C.O.P. No. 4704 of 2013 dated 10.01.2023.

2.The appellants had filed a claim petition before the Tribunal stating that on 12.08.2013, when the deceased was walking along the Muduchur to Tambaram road near Attai Company bus stop, a motorcycle bearing Registration No. TN 03 K 6773 came from same direction in a rash and negligent manner and dashed the deceased, as a result of which the deceased sustained severe injuries and was admitted in the hospital. However, he died on 19.10.2013.

3.The first respondent remained exparte before the Tribunal.

4.The second respondent filed counter denying all the averments made in the claim petition stating that since the first respondent is not the real owner of the vehicle, the second respondent is not liable to pay the compensation; that the rider of the motorcycle drove the vehicle under the influence of alcohol and that the second respondent is not liable to pay compensation for violation of policy condition; that the deceased had

crossed the road without noticing the upcoming vehicles and thus resulted in accident; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

5.The appellants examined three witnesses as PW1 to PW3 on their side and marked Ex.P.1 to Ex.P.21. On the side of the second respondent no witness has been examined. However, Ex.R.1 and Ex.R.2 has been marked.

6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent riding by the rider of the motor cycle and directed the second respondent to pay a sum of Rs.1,50,100/- as compensation to the appellants. Aggrieved by the said award, the appellants have preferred the instant appeal.

7.Heard the learned counsel for the appellants, learned counsel for the first respondent and the learned counsel for the second respondent.

8.The learned counsel for the appellant submitted that the deceased

met with an accident on 12.08.2013. He was initially admitted in the Government Hospital at Chrompet and thereafter shifted to the private hospital in which PW2 was working as doctor. He suffered multiple injuries and underwent surgeries. He was treated as inpatient for nearly 38 days. He was discharged from the hospital on 24.09.2013. Thereafter, when he was admitted in the hospital for second surgery for removal of a external fixture, he died in the hospital on 19.10.2013. The evidence, therefore, would show that there was a causal relationship between the accident and the death. However, the Tribunal on the wrongful appreciation of the evidence on record, held that the death had no nexus with the accident. The learned counsel therefore submitted that the finding of the Tribunal holding that the deceased did not die due to the accident has to be set aside. As regards compensation, the learned counsel submitted that the deceased was working as watchman and 62 years old at the time of accident and prayed for just and reasonable compensation.

9.The learned counsel for the second respondent per contra submitted that the evidence of PW2 doctor is categorical and suggests that the death was not due to the injuries caused in the accident.

Therefore, the learned counsel submitted that no interference is called for and prayed for dismissal of the appeal.

10.The learned counsel for the first respondent reiterated the submissions made by the learned counsel for the second respondent and prayed for dismissal of the appeal.

11.The questions involved in the instant appeal are;

- (i)Whether the deceased died due to the injuries sustained in the accident?
- (ii)Whether the compensation awarded by the Tribunal is just and reasonable?

12.The admitted facts are that the deceased met with an accident on 12.08.2013. He was initially admitted at Government Hospital at Chrompet and thereafter shifted to a private hospital. He had taken treatment as an inpatient from 12.08.2013 to 24.09.2013. The discharge summary reveals that the deceased has taken the following treatment;

“COURSE IN HOSPITAL:

*Patient admitted with fracture both bones leg, with*

*external fixation done. Ortho opinion obtained. Patient was posted for wound Debridement. All Investigations done. Surgery – wound debridement & medial hemisoleus flap done. Skin grafting done. Post op period uneventful. Antibiotics were given. Dressings changed periodically.”*

Ex.P.6, the discharge summary issued by the hospital shows that the deceased died in the hospital on 19.10.2013 due to sudden cardiac respiratory arrest. It is also seen that PW2 doctor had stated in his cross examination that the deceased died due to cardiac arrest and not due to the fracture suffered by him. The Tribunal based on the said evidence held that there was no nexus between the accident and the death.

13.However, this Court is of the view that the said approach of the Tribunal may not be correct in the facts and circumstances of the case. It is well settled that in a claim petition under the Motor Vehicles Act, a fact can be established by preponderance of probability. The death may be due to the cardiac arrest but the cause for it has to be ascertained. The nature of injuries suffered by the deceased and the manner and the period of treatment taken by him would probabalise the causal relationship between the accident and the death. The discharge summary and the

medical records do not suggest that the deceased suffered from any other ailment. In a claim petition under the Motor Vehicles act, one cannot adopt a hyper-technical approach. The Courts have to bear in mind the object and purpose of the beneficial legislation. Therefore, considering the evidence of PW1, the discharge summary, the nature of injuries, the treatment taken by the deceased and the proximity in time between the accident and the death, this Court is of the view that the appellants have established the nexus between the death and the injuries suffered in the accident. Therefore, the finding of the Tribunal holding that there was no nexus is set aside.

14.As regards compensation, it is seen that as per the evidence of PW1, the deceased was working as watchman and was aged 62 years at the time of accident. Considering his age, avocation and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.9,000/- per month. The appellants are entitled to 10% towards future prospects and the multiplier applicable is 7. The deceased was survived by his wife and two children. Therefore, 1/3<sup>rd</sup> has to be deducted towards personal expenses. Thus, the loss of income would be  $\text{Rs.9,000} + \text{Rs.900 (10\% of Rs.9000)} = \text{Rs.9900} \times 12 \times$

$7 \times \frac{2}{3} = \text{Rs.}5,54,400/-$ . Since the multiplier method is adopted, the award under the head loss of earnings is deleted. A sum of Rs.15,000/- each is awarded under the head Loss of estate and funeral expenses. Further, the appellants are entitled to a sum of Rs.1,20,000/- under the head loss of love and affection. Further, the award under the head attender charges is enhanced from Rs.12,000/- to Rs.15,000/-. The award under the other heads such as medical expenses, extra nourishment and transportation are just and the same are confirmed. Thus, the award of the Tribunal is modified as follows;

| S. No | Description                | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|----------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Loss of income             | ---                             | 5,54,400                          | Granted                                |
| 2.    | Transportation             | 5,000                           | 5,000                             | Confirmed                              |
| 3.    | Medical expenses           | 1,03,020                        | 1,03,020                          | Confirmed                              |
| 4.    | Funeral expenses           | ---                             | 15,000                            | Granted                                |
| 5.    | Loss of estate             | ---                             | 15,000                            | Granted                                |
| 6.    | Loss of love and affection | ---                             | 1,20,000                          | Granted                                |
| 7.    | Extra nourishment          | 15,000                          | 15,000                            | Confirmed                              |
| 8.    | Attender charges           | 12,000                          | 15,000                            | Enhanced                               |
| 9.    | Loss of earnings           | 15,000                          | ---                               | Deleted                                |
|       | Total                      | 1,50,020 rounded off to         | 8,42,420 rounded off to 8,42,500  | Enhanced by Rs.6,92,400/-              |

|  |  |          |  |
|--|--|----------|--|
|  |  | 1,50,100 |  |
|--|--|----------|--|

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,50,100/- is hereby enhanced to Rs.8,42,500/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The second respondent is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants are permitted to withdraw the award amount as per the apportionment made by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary court fee if any on the enhanced amount. No costs.

**17.08.2023**

*ay*

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

**SUNDER MOHAN, J**

*ay*

To

1. The Motor Accident Claims Tribunal,  
Special Sub Court No.1 to deal with MCOP Cases,  
Small Causes Court, Chennai.
2. The Section Officer,  
V.R. Section,  
High Court of Madras,  
Chennai.

C.M.A. No.897 of 2023

*CMA No. 897 / 2023*

Dated: 17.08.2023