



C.M.A.No.642 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.11.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.642 of 2018
and
C.M.P.Nos.5776 and 15202 of 2018

The Divisional Manager,
New India Assurance Company Ltd.,
Vellore.

.. Appellant

Vs.

1. J.Ambiga
2. J.Rajasekar
3. Minor J.Poornima
4. Minor J.Dhanasekar
- (3rd and 4th respondents are rep. by
mother/guardian Ambiga, 1st respondent)
5. V.Kamalammal
6. P.Ravikumar

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 29.04.2017 in M.C.O.P.No.560 of 2015 on the file of the Motor Accidents Claims Tribunal (I Additional District and Sessions Court), Vellore District.

For appellant : Mr.J.Chandran

For respondents: Mr.C.Prabakaran for RR-1 to 5

Notice dispensed with for R-6

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JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company challenging the Award dated 29.04.2017 passed in M.C.O.P.No.560 of 2015 on the file of the Motor Accidents Claims Tribunal (I Additional District and Sessions Court), Vellore.

2. The respondents 1 to 5 are the legal representatives/dependants of the deceased V.Janarthanan and they have filed claim petition in the said M.C.O.P. claiming compensation for the death of the deceased. While travelling in a Mini Bus bearing Registration No.TN-67-AC-7449 owned by the sixth respondent, the driver of the said bus drove it in a rash and negligent manner without following the road traffic Rules, and hit behind the lorry bearing Registration No.TN-48-W-3355 which was coming on the same direction and due to the accident, the deceased sustained grievous injuries on the right side of the head and sustained injuries all over the body; immediately he was taken to the Government Hospital, Perambalur, where he was given first-aid and thereafter he was shifted to Narayani Hospital, Ariyur, Vellore-58 for further treatment. Despite best treatment, the deceased died on 17.03.2015. A case was also registered against the driver of the said mini-bus in which the deceased was travelling and the said



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mini-bus dashed behind the lorry. Hence, the claimants have filed the claim petition, in which the Tribunal awarded a sum of Rs.12,37,000/-. Challenging the liability and also the quantum, the Insurance Company has filed the present appeal before whom the sixth respondent's bus was insured, and therefore, they have filed the present appeal.

3. Learned counsel for the appellant/Insurance Company submitted that the Tribunal has awarded compensation in a sum of Rs.12,37,000/- which is highly excessive, exorbitant and unsustainable in law. He further submitted that the alleged accident was said to have taken place on 07.01.2015, whereas the deceased died on 17.03.2015, after 60 days. The post-mortem was not conducted on the body of the deceased and in the absence of the post-mortem certificate, the Tribunal erroneously held that the death of the deceased was due to accidental injuries. Actually, there is no nexus for the cause of the death of the deceased with the accidental injuries. The Police registered a case in Crime No.16 of 2015 for the offences under Section 279 and 337 IPC. Even after the death also, the said Section of the offences had not been altered as the one under Section 304-A IPC, and therefore, it clearly shows that the death was not due to accidental injuries. If at all the death had occurred only due to the accidental injuries, the case would have been registered/alterd under Section



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304-A IPC and though initially, a case was registered under Sections 279 and 337 IPC, even after the death of the deceased, the Section of the offences was not altered, which clearly proved that the death was not due to accidental injuries. Though the claim petition was filed, initially, soon after the accident, the deceased was admitted in the Government Hospital, Perambalur, and thereafter at Sri Narayanai Hospital, Vellore, and they did not whisper anything about the treatment given by P.W.3 Doctor, and therefore, the evidence of P.W.3 cannot be taken into consideration for arriving at the conclusion that the death was due to accidental injuries. The evidence of P.W.3 and Ex.P-5 CT Scan report, ought to have been rejected by the Tribunal and the deceased died only due to illness and not due to accident.

4. Learned counsel for the appellant/Insurance Company further submitted that the sixth respondent's bus driver was not having valid driving licence, and therefore, the appellant/Insurance Company is not liable to pay the compensation. At the time of accident, the deceased was aged about 44 years, and the income of the deceased was not proved, and the impugned Award passed by the Tribunal is highly exorbitant and therefore, the learned counsel prayed that the appeal may be allowed and the impugned Award passed by the Tribunal may be set aside.

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5. Learned counsel for the respondents 1 to 5/claimants submitted that the deceased, while travelling in the mini bus on NH-55 road and the said bus having been owned by the sixth respondent herein, on Chennai-Trichy Road, near four Road fly-over at Perambalur, the driver of the bus drove the said mini bus in a rash and negligent manner without observing any road traffic Rules, and hit behind the lorry which was coming on the same direction and due to the accident, the deceased who was travelling in the said mini-bus, sustained grievous injuries on the right side of the head and also sustained injuries all over the body and immediately he was admitted in the Government Hospital, Perambalur and after giving first-aid, he was immediately shifted to Narayani Hospital at Vellore and there, despite treatment, he died. The respondents 1 to 5 are the claimants being the wife, mother and children of the deceased Janarthanan. At the time of accident, the sixth respondent's vehicle was insured with the appellant/Insurance Company and only the lorry driver of the sixth respondent made a complaint before the Perambalur Police and the case was registered in Cr.No.16 of 2015 for the offences under Sections 279 and 337 IPC, which was subsequently altered to one under Section 304-A IPC.

6. Learned counsel for the respondents 1 to 5/claimants further contended

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that prior to the accident, the deceased Janarthanan was hale and healthy and was working as Driver in the Tamil Nadu State Transport Corporation, Vellore Region and earning a sum of Rs.15,000/- per month, but due to the accident, he died and he was the sole bread-winner in his family and the claimants are the dependants of the deceased. In order to prove the accident, P.W.2, one of the co-passengers who accompanied the deceased at the time of accident, has clearly deposed that in the mini bus, they went to Sabarimala pilgrim and after completing their pilgrimage, while returning to the native place and while nearing Perambalur, near four-road fly over, the driver of the mini bus in which they were travelling, drove the bus in a rash and negligent manner and even without observing the road traffic rules, it had hit behind the lorry. Further, due to accident, the deceased sustained injuries and he was admitted initially in the Government Hospital, Perambalur, where he was given first-aid and thereafter, he was admitted at Narayani Hospital for treatment. Thereafter, he was under treatment for three months and he died later.

7. Learned counsel for the respondents 1 to 5 further submitted that regarding the injuries and the cause of the death, the Doctor who treated the deceased, was examined as P.W.3 and through whom, the CT scan report was marked and the medical reports clearly show that the deceased died and though



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autopsy was not conducted on the body of the deceased, the medical records and also the evidence of P.W.3 Doctor clearly shows that the deceased died only due to the accidental injuries and the appellant is the Insurance Company of the bus belonging to the sixth respondent and therefore, the appellant is liable to pay the compensation. At the time of accident, the deceased was 44 years old and he was a driver and also was having valid driving licence and the salary certificate pertaining to the deceased was also produced, based on which, the Tribunal applied appropriate multiplier and also took into consideration the future prospects and granted the compensation, which is reasonable and just and fair and therefore, there is no merit in the appeal, which is liable to be dismissed.

8. Heard both sides and perused the materials available on record.

9. Admittedly, the deceased was travelling along with P.W.2 in the above said mini bus. According to P.W.2, the mini bus was going to Sabarimala and after completing the Sabarimala pilgrimage and while returning to the native place of the passengers, near Perambalur four-road, the driver of the sixth respondent's mini bus had driven the vehicle in a rash and negligent manner and dashed behind the lorry. The driver of the lorry gave a complaint against the driver of the mini bus and a case was also registered. The accident is not in

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dispute. The eye-witness was examined as P.W.2 who was one of the co-traveller and therefore, though the appellant/Insurance Company denied the manner of the accident, however, the driver of the sixth respondent's mini bus was not examined. Therefore, the appellant has not established any contra evidence to P.W.2's deposition and the appellant has also not challenged the presence of P.W.2 in the said bus, while the mini bus met with the accident. Hence, from the evidence of P.W.2, it is clear that there is no contra evidence and this appellate Court as final Court of fact finding, holds that since the case was registered against the driver of the offending mini bus belonging to the sixth respondent, P.W.2 being the eye-witness, has also given the evidence regarding the manner of the accident, the appellant has not proved the contra evidence to that by examining the driver of the bus or any other passenger of the bus. Since P.W.2 himself is one of the co-passengers and who was travelling along with the deceased at the time of accident in the said offending mini bus, this Court finds that the accident had occurred only due to rash and negligent driving of the driver of the mini bus belonging to the sixth respondent and therefore, the sixth respondent's bus having been insured with the appellant/Insurance Company, they are liable to pay the compensation to the claimants.

10. Further, the dispute of the appellant/Insurance Company is that the



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death of the deceased was not due to the accidental injuries, and though the accident took place on 07.11.2015, the deceased died only on 17.03.2015, and therefore, there is no nexus between the death of the deceased and the accidental injuries sustained by him. The evidence of P.W.2 (co-passenger) and P.W.3 Doctor is very clear that on the date of accident, soon after the accident that occurred on 07.01.2015, the deceased was admitted in the Perambalaur Government Hospital for first aid and thereafter, he took further treatment in Narayanai Hospital at Vellore. Despite treatment, he died on 17.03.2015. Though it is admitted fact that the body of the deceased was not subjected to autopsy, but however, the evidence of P.W.2 is very clear that the deceased sustained injuries only due to the accident and was admitted in the hospital and he was taking treatment. In order to prove the cause of the death, one Dr.Shanmugasundaram was examined as P.W.3 and he has also clearly deposed that the deceased died only due to the accidental injuries. The claimants have clearly stated that due to the accident, the deceased sustained injuries on the right side of the face, head, etc., and he sustained injuries all over his body and he was immediately taken and admitted in the hospital. Even the evidence of P.W.3 and Ex.X-1 treatment certificate and further the scan report, all clearly show that the deceased suffered head and facial injuries.



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11. Further, P.W.5 has clearly stated that the deceased sustained injuries and therefore, there is no contra evidence on the side of the appellant. Though the appellant has stated that, in the claim petition, the claimants have not stated regarding the treatment given by P.W.3, but the fact remains that the evidence of P.W.3 is based on the medical report and documentary evidence, and therefore, the deceased was aged about 44 years and a copy of the driving licence was also produced and therefore, on a combined reading of the evidence of P.W.2 and P.W.3 along with Ex.P-5 and X-1, this Court finds that the death of the deceased was only due to accidental injuries. Merely because the autopsy was not conducted on the body of the deceased, it cannot be stated that the death was not due to accidental injuries and therefore, the respondents 1 to 5/claimants are innocents and admittedly, the deceased was admitted in the hospital immediately and he was taking further treatment at Vellore Narayani Hospital and he died there and since he died in a private hospital, that too in a charitable hospital, the claimants were not aware about the significance of post-mortem. However, P.W.3's evidence is clear to show that the death was due to accidental injuries and therefore, this Court finds that the deceased died only due to the accidental injuries, in the absence of any contra evidence from the appellant/Insurance Company.



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12. As far as the quantum of compensation is concerned, it is seen that the deceased was 44 years at the time of accident and a copy of the driving licence of the deceased was also produced and marked as Ex.P-7 and Ex.P-6 is the Identity Card and all these documents proved that the deceased was working as driver in the Tamil Nadu State Transport Corporation (Vellore Division). The deceased was a permanent employee and the salary slip clearly shows that at the time of accident, he was getting Rs.5,370/- and therefore, since he was a permanent employee and also working in the State Transport Corporation as Driver and the Tribunal has rightly relied on pay slip, and the Tribunal had applied proper multiplier, and since he was a permanent employee, the Tribunal has fixed his salary in the age group of 44 and arrived at the loss of income at Rs.8,79,648/-.

13. However, as far as the loss of consortium to the wife is concerned, the wife is entitled only for Rs.40,000/- and this Court finds that the Tribunal has awarded right sum under the heads -- loss of love and affection, medical expenses, pain and suffering, funeral expenses, transportation charges and damages to clothes and articles, which are all hereby confirmed. Since the deceased was a permanent employee in the age group of 44 years, he was the only bread winner in the family, this Court finds that the loss of consortium to



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the wife shall be reduced from Rs.1 lakh to Rs.40,000/-.

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14. For the reasons stated above, there is no merit in the appeal and this appeal is liable to be dismissed. Accordingly, this appeal is dismissed with the above modification, as the offending mini bus was insured with the appellant/Insurance Company. There shall be no order as to costs. Consequently, the miscellaneous petitions are closed.

06.11.2023

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no

CS

To

1. The Presiding Officer,

The Motor Accidents Claims Tribunal (I Additional District and Sessions Court),
Vellore District.

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

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P.VELMURUGAN, J

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Pre-delivery Judgment in

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Judgment delivered on 06.11.2023

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