IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.690 of 2018
and
C.M.P. No.5978 of 2018

The Divisional Manager
United India Insurance Co. Ltd.
13A, Netaji Road, Cuddalore ... Appellant

Vs.

P.Kumaragurubaran (Died)
1. Pandurangan
2. Tmt.Chandra
3. P.Nandagopal ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP No.1579 of 2011 on 01.07.2017 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Cuddalore.

For Appellant : J.Chandran

For Respondents : M/s.S.Sasikala for
M/s.V.Ramya Rao for R1 and R2
R3 was set ex-parte by this Court
by order dated 15.06.2023

JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree passed in MCOP No.1579 of 2011 on 01.07.2017 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Cuddalore.

2. The appellant is the insurer and the 3rd respondent is the owner of the offending vehicle bearing Regn. No.PY-01-AY-8403. The respondents 1 and 2 are the claimants.

3. The case of the claimants is that on 12.06.2011 at about 14.50 hours, when the deceased Kumaragurubaran was proceeding as a pillion rider in the Hero Honda Splendor motor cycle bearing Reg. No.TN-31-AA-7904, from west to east, driven by one Gopalarksihnan, at a moderate speed, keeping extreme left of the Diversion Road, near Nachiyammankoil, Thattanchavadi, the motor cycle belongs the 3rd respondent herein, bearing Regn. No.PY-01-AY-8403 which came behind at a great speed and in a rash and negligent manner, dashed against the motor cycle of the deceased due to which, the deceased sustained fracture and multiple grievous injuries. Immediately he was admitted in Government Hospital, Panruti. Thereafter, he

took treatment in Government Head Quarters Hospital at Cuddalore, PIMS Hospital at Pondicherry and thereafter, he was in continuous treatment in other private hospitals. However, he died on 02.12.2013, after a period of 2 years from the date of accident.

4. Originally, the deceased himself filed the claim petition in MCOP No.1579 of 2011 on 01.07.2017 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Cuddalore, for the injuries sustained by him and subsequently, during the pendency of the claim petition, he died. Therefore, the claim petition was converted into fatal case and the legal representatives/dependents of the deceased were impleaded as claimants. The Tribunal after enquiry, awarded compensation of Rs.5,21,385/- and directed the insurer of the offending vehicle to pay the compensation to the claimants with interest at 7.5% per annum from the date of petition i.e. 03.08.2011 till the date of realization.

5. Aggrieved by the same, the insurer of the offending vehicle, has filed the present appeal.

6. The learned counsel for the appellant/Insurance Company submitted that the death of the deceased was not due to the accidental injuries. But the Tribunal failed to consider the same and adopted multiplier method as if, it was a fatal case. Further, after the death of the deceased, the body of the deceased was not subjected to post-mortem and there is no evidence to show that the death of the deceased was due to the accidental injuries. The date of accident is on 12.06.2011 whereas, the deceased died on 02.12.2013 i.e. after two years. Therefore, the death of the deceased is a natural one and he did not die due to the accidental injuries. The Tribunal failed to consider the fact that there is no proximate case between the accidental injuries and the death of the deceased and there is no nexus or connection for the death of the deceased with the accidental injuries. Hence, it warrants interference.

7. The learned counsel for the claimants submitted that the appellant/Insurance Company did not deny the accident and the manner of accident and also the liability. They have also not denied that the offending vehicle was insured with them at the time of accident. The only contention of the appellant/Insurance Company is with regard to the quantum of

compensation since the Tribunal converted the injury case as a fatal case. Because, originally the claim petition was filed by the deceased claiming compensation for the accidental injuries. Except this, the appellant/Insurance Company is not taking any other defence. Though post-mortem was not conducted on the body of the deceased, in the claim petition itself, which was filed by the deceased while he was alive, he has clearly stated that he sustained accidental injuries as follows; -

1. Comminuted fracture and distal, middle 1/3rd junction of Right Tibia
2. Fracture of Shaft of Right Fibula
3. Injury on Right Knee
4. Injury on Right Ankle
5. injury on Hip
6. Multiple grievous injuries all over the body

Further, the deceased has stated in the claim petition that due to the accidental injuries he could not lead a normal like and he lost his job and income. He could not stand, sit and walk as before the accident. He has become permanently disabled and incapacitated from earning. Therefore, mere non subjecting the body of the deceased for post-mortem, cannot be a ground to disallow the claim petition. The learned counsel further submitted that for the accidental injuries, he was in continuous treatment. However, due to poverty, he could not get better treatment and subsequently, he succumbed to the injuries. Though, he died after 2 years from the date of accident, the death of the deceased was only due to the accidental injuries and if the accident had not occurred, he would not have sustained injuries and he would have lived long. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

8. Heard and perused the materials available on record.

9. The accident is admitted. The manner of accident is admitted. At the time of accident, the offending vehicle was insured with the appellant/ Insurance Company which is not in dispute. The liability is also not disputed. The only denial of the appellant/Insurance Company is that the death of the deceased was not due to the accidental injuries. However, there is no proof to show that the deceased died naturally after two years from the date of accident, at the young age of 31 years.

10. As far as the death of the deceased is concerned, at the time of accident, the deceased was aged 29 years. As stated above, the accident is

not in dispute. Due to the accident, the deceased sustained grievous injuries which is also not disputed. Though the deceased died after 2 years from the date of accident, in the absence of any material to show that due that the death of the deceased was a natural one or due to some other reasons, he died subsequently, the Tribunal rightly adopted multiplier method and awarded compensation by considering the age and nature of injuries sustained by the deceased. This Court does not find any perversity in adopting multiplier method.

11. As far as quantum is concerned, in the absence of any material to prove the avocation and income of the deceased, the Tribunal has fixed the notional income of the deceased at Rs.7,000/-. However, since the deceased was a bachelor, the Tribunal ought to have deducted half of his income towards his personal expenses, whereas, the Tribunal has deducted only 1/3rd. Further, as per the settled proposition of law, the age of the deceased has to be taken into consideration for adopting multiplier and not the age of the claimants, whereas in this case, the age of the deceased was 29 years at the time of accident and the correct multiplier for the age group of 26 to 30 is "17", whereas, the Tribunal as per the legal term "Actio Personalis Moritu cum Persona" adopted the multiplier "7" by considering the age of the

father of the deceased who was aged 64 years.

12. Therefore, instead of instead of Rs.3,92,028/-, this Court grants a sum of Rs.9,99,600/- (Rs.7,000/- (-) 50% +40%x12x17) towards loss of dependency, after deducting 50% of the income towards personal expenses and adding 40% towards future prospects and adopting multiplier "17". Insofar as the other heads are concerned, they are reasonable and reflect the just compensation which need no interference.

13. Though the learned counsel for the appellant/Insurance Company vehemently contended that the claimants have not filed any appeal or cross objection regarding the multiplier adopted by the Tribunal and without filing of any application or cross objection, this Court has no power to enhance the compensation and also placed reliance on the Judgment of the Hon'ble Supreme Court in ***2018 (1) TNMAC 435 (SC) (Shivawwa and Another Vs. The Branch Manager, National India Insurance Co. Ltd. and Another),*** in this case, the claim petition was originally filed by the deceased when he was alive for the injuries sustained by him in the accident and during pendency of the petition, he died. Thereafter, the claimants who are the aged

parents of the deceased were impleaded. Though the claimants have not filed any appeal or cross objection, in appropriate cases, if the appellate Court, as a final Court of fact findings, while re-appreciating the entire materials, finds that the award passed by the Tribunal does not reflect the just compensation and when there are sufficient materials, the appellate Court can give an independent findings and without any appeal of cross objection, in the interest of justice, the appellate Court can enhance the compensation. Therefore, the decision referred to by the learned counsel for the appellant is not applicable to the present case on hand.

14. Accordingly, the Award passed by the Tribunal is re-worked as follows:-

S. No.	Description	Amount awarded by the Tribunal	Amount awarded by this Court (Rs)	Award Confirmed/Enhanced/Granted/ Reduced
1.	Loss of dependency	Rs.3,92,028/-	Rs.9,99,600/-	**Enhanced**
2	Loss of Love and Affection	Rs.50,000/-	Rs.50,000/-	Confirmed
3	Medical Expenses	Rs.59,357/-	Rs.59,357/-	Confirmed
4	Transport Expenses	Rs.3,200/-	Rs.3,200/-	Confirmed
5	Funeral Expenses	Rs.20,000/-	Rs.20,000/-	Confirmed
	Total	Rs.5,24,585/-	Rs.11,32,157/-	**Enhanced**

15. Accordingly, the Award of the Tribunal is modified by enhancing the compensation amount from Rs.5,24,585/- to Rs.11,32,157/-

16. The appellant/Insurance Company is directed to deposit the modified award amount, to the credit of MCOP No.1579 of 2011 on 01.07.2017 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Cuddalore, with interest at the rate of 7.5% per annum, **from the date of death of the deceased i.e. 02.12.2013, till the date of realization,** as awarded by the Tribunal, less the amount if any already deposited, with a period of six weeks from the date of receipt of a copy of this order.

17. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including the interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimants, and credit the actual amount, based on the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

18. The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation amount.

19. The Tribunal is directed to permit the claimants to withdraw the compensation amount without any formal application since the parents of the deceased/claimants are struggling for more than 11 years.

20. With the above modifications, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs in the present appeal.

22.09.2023

ksa-2
Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1.The Motor Accidents Claims Tribunal
(Special Subordinate Judge),
Coimbatore.

2.The Section Officer,
VR Section,
High Court,
Madras.