



C.M.A.No.2181 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16.03.2023
Pronounced on	06.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND**

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI,J.**

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P.Ramesh (Died)

1. Saritha

2. Minor Gowsik

3. Minor Sundaresan

(Minors rep. By their next friend

Guradian/Mother/Saritha)

4.Perumal

...Appellants

Vs.

1.P.Kaliyammal

2.The Divisional Manager,

Oriental Insurance Company Limited,

KVA Complex, 90-A, Thuraiyur Raod,



Namakkal

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...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the award dated 06.02.2020 made in M.C.O.P.No.58 of 2015 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate) Namakkal.

For Appellant : Mr.M.Lokesh
For R1 : ex-parte
For R2 : Mr. K.Vinod
for M/s.Elveera Ravindran

JUDGMENT

(Judgment of the Court was delivered by K.GOVINDARAJAN THILAKAVADI,J.)

The appellant has preferred this Civil Miscellaneous Appeal as against the award dated 06.02.2020 made in M.C.O.P.No.58 of 2015 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate)Namakkal.



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2. Aggrieved by the insufficiency of compensation awarded by the Tribunal, the claimants have brought forth the above said civil miscellaneous appeal.

3. In the impugned award the Tribunal directed the respondents to pay a sum of Rs.1,74,300/- as compensation together with an interest at the rate of 7.5% per annum from the date of claim till realization and costs for the injuries sustained by the 1st petitioner-P.Ramesh who met with an accident on 02.12.2014 at about 2. p.m.

4. The facts of the case is that on 02.12.2014 at about 2.p.m the 1st petitioner-Ramesh was travelling as a passenger in the bus bearing Reg. No. TN-28-P-7330 to Sabarimala. In the Erumeli to pamba road when the bus was nearing the south of village, the driver of the bus drove the vehicle in a rash and negligent manner due to which the bus was capcized and caused the accident. In the said accident, the 1st petitioner-Ramesh sustained multiple injuries all over his body and was immediately taken to MCH Hospital, Kottayam and from there he was shifted to Ganga Hospital, Coimbatore for further treatment. The right leg of the 1st



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petitioner was amputated. The Erumalai police registered a case in Crime No.983 of 2014 against the driver of the bus under Section 279, 337, 338 IPC. The 1st petitioner-Ramesh at the time of the accident was aged about 27 years, painter by profession and was earning Rs.15,000/- per month. Due to the accident, he was unable to do any work as before. During the pendency of the claim, the 1st petitioner-Ramesh died on 31.03.2015 leaving behind petitioners 2 to 5 as his legal heirs, not attributed to the injuries suffered by the accident. Based on the above contention, the petitioners 2 to 5 assessed the damages at Rs.20,00,000/- and prayed for an award against the respondents. The 1st and 2nd respondents being the owner and insurer of the offending vehicle respectively as on date of the accident and hence, they were jointly and severally liable to pay compensation to the petitioners.

5.In order to prove their case, the petitioners have examined P.W.1 to P.W.3 and relied on 18 documents marked as Ex.P.1 to P.18. The claim of the petitioners was resisted by the 2nd respondent in their counter statement stating that the accident was not due to the negligence of the driver of the bus. The petition does not disclose the cause of death of the 1st petitioner and in fact the 1st petitioner died



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after few months from the date of accident. Hence, the amount of compensation claimed by the claimants is excessive and illegal and therefore the claim petition is liable to be dismissed. No oral and documentary evidence let in by the respondents.

6.The Tribunal framed the necessary points for consideration, scrutinized the records and appreciated the evidence, held that the rash and negligent driving of the bus bearing Rg.No TN28-P-7330 belonging to the 1st respondent by its driver was the sole cause of the accident and therefore the respondents 1 and 2 were jointly and severally liable to pay compensation to the petitioners 2 to 5, assessed the damages at Rs.1,74,300/- and passed an award directing the respondents to pay the said amount along with interest at the rate of 7.5% per annum from the date of claim till realization with costs.

7.This appeal has been brought forth at the instance of the appellant/claimant aggrieved by the insufficiency of the compensation awarded by the Tribunal. The learned counsel appearing for the appellant submits that in the



said accident the 1st petitioner suffered grievous injury and had undergone surgery and in order to save his life his right leg was amputated above the knee. On 31.03.2015 within three months 29 days from the date of accident the 1st petitioner died. However, the Tribunal without taking note of the above fact awarded a meagre sum of Rs.1,74,300/- as compensation. The compensation ought to be awarded not on account of personal injuries, but for the loss of estate of the deceased. To support his contention the learned counsel has relied upon the following decided cases reported in :

- 1. 2021 ACJ 2576**
- 2. CDJ 2008 GHC 279**
- 3. CDJ 2014 GHC 509**
- 4. 2001 ACJ 996**
- 5. 2014 ACJ 1621**
- 6. 2004 ACJ 974**
- 7. 2002 ACJ 1828**

8.Per contra, MR.K.Vinod, learned counsel appearing on behalf of the 2nd respondent submits that the cause of action being personal to the injured abates on his death, which was not caused due to the accident. Hence, the compensation awarded by the Tribunal is reasonable and therefore, calls for no interference .



9. We have considered the rival submissions on behalf of the parties. It is a fact not in controversy that there occurred an accident on 02.12.2014 at about 2.p.m near Erumeli south village. Neither the owner nor the insurer of the above said offending vehicle have chosen to file either an appeal or the cross objection challenging the award of the Tribunal on the question of negligence. Under these circumstances, the finding of the Tribunal regarding negligence and the liability of the respondents to pay compensation remains unchallenged. However, the challenge to the judgment and award of the Tribunal is made only by the appellant/claimants, that to, regarding the insufficiency of the compensation awarded by the Tribunal.

10. Admittedly, the original claimant was travelling as a passenger in the offending vehicle to Sabarimala and due to the rash and negligent driving of the driver of the bus, the bus was capsized and caused the accident. It is also not in dispute that the 1st petitioner sustained multiple injuries all over his body and was taken to the hospital at Kottayam for first aid and shifted to Ganga Hospital, Coimbatore for further treatment. Ex.P3-wound certificate and Ex.P6-discharge summary discloses that the 1st petitioner-Ramesh sustained grievous injuries in the



accident and had also undergone surgery in which his right leg was amputated.

Indisputedly the 1st petitioner-Ramesh died on 31.03.2015. Though, the appellants would claim that there is nexus between the injuries sustained by the 1st petitioner-Ramesh and his death, Ex.P.8-Death Summary issued by the Government Hospital, Namakkal, would reveal that he was deceased, not attributed to the injuries suffered in the accident, but for other reason. The appellant/ claimants failed to establish that the 1st petitioner-Ramesh died only as a result of the injuries sustained by him in the hospital. However, even if there is no nexus between the injuries and the death of the deceased, the claimants as the legal heirs of the injured/deceased can claim for loss of estate of the injured/deceased. From the consistent judicial view taken by various High Courts, loss of estate would include expenditure on medicines, treatment, diet, attendant charges, doctors fee, etc., including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted from the estate of the injured, subsequently deceased. However, in the present case, the claims Tribunal in a very cursory and cryptic manner awarded compensation of Rs.1,74,300/- along with 7.5 % interest.



11.The learned counsel appearing of the 2nd respondent would submit that the appellants/claimants are not entitled to any enhanced amount towards future prospects, since the deceased survived only for a period of three months after the alleged accident.

12.However, in terms of the principles laid down in judgement of the Supreme Court in *Sarla Dixit Vs. Balwant Yadav*, reported in *1996 ACJ 581 (SC)* as well in *General Manager, Kerala State Road Trans, coporation vs, Susamma Thomas*, reported in *1994 ACJ 1(SC)* about calculation of loss of income and dependency, even in an injury case the principle regarding consideration of future prospects cannot be ignored in such like matters for the injury is not temporary and it has caused virtually permanent disability. In the present case, the disability certificate is not marked on the side of the claimants. But the fact that the right leg of the deceased was amputated from the knee is not in dispute. While so, in case one goes by the definition of the term "Total disablement" specified in para 1 of Schedule 1 of *Workmen's Compensation Act, 1923*, then the injured suffered injury mentioned in item No.19, 19-Amputation below middle thigh to below knee, i.e., 60 per cent. In the present case, there is amputation of right leg to the deceased. According to the claimants the 1st



petitioner/deceased was painter by profession and was earning a sum of Rs.15,000/- per month. Since there was no proof to establish the income of the deceased, the Tribunal has fixed the monthly income of the deceased at Rs.9000/- which in our considered opinion is quite low. The accident took place in the year 2014. Considering the facts and circumstances of the case, this Court fix the monthly income of the 1st petitioner/Ramesh at Rs.12,000/-. Therefore, the annual salary of the deceased would be at the rate of Rs.12,000x12=Rs.1,44,000/-. After deducting 40% of the annual salary will be Rs.1,44,000/-40%=Rs.86,400/-.

13. The deceased has suffered monetary loss of Rs.1,22,400/-(86,400 + 3months salary (36,000)). Applying multiplier of 14 (1,22,400/- x14= Rs.17,13,600/-) and deducted 10% from Income Tax, comes to Rs.15,42,240/- [17,13,600/-(10%)]. Therefore, the appellant is thus entitled to loss of income amounting to Rs.15,42,240/-. The compensation awarded by the Tribunal with regard to other expenses such as Medical Expenses, Assistance expenses, transport expenses, nourishment and damages to clothes are confirmed. Hence, the reassessed total compensation would be calculated as follows:



<i>S.L.No</i>	<i>Heads</i>	<i>Amounts awarded by this Court</i>
1.	Loss of Income	Rs.15,42,240/-
2.	Medical Expenses	Rs.81,300/-
3.	Transport	Rs.20,000/-
4.	Extra Nourishment	Rs.5000/-
5.	Assistant Expenses	Rs.30,000/-
6.	Damages to cloth	Rs.20,000/-
	Total	Rs.16,98,540/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and a sum of Rs.1,74,300/- awarded by the Tribunal is enhanced to Rs.16,98,540/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

15. The Insurance Company is directed to deposit the above said sum as modified by this Court along with interest, within a period of twelve weeks from the date of receipt of a copy of this judgment if not already deposited. On such deposit, the appellant 1, 4 are permitted to withdraw the compensation as modified by this Court along with interest, after adjusting the amount, if any, already withdrawn, as apportioned by the Tribunal. As far as the 2nd and 3rd respondents are concerned, the amount apportioned to the share of the respondents 2 and



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3/minors are directed to be deposited in any one of the Nationalized bank under the auto renewal clause in concerned District, till they attains majority as per the ratio of apportionment ordered by the Tribunal, through NEFT/RTGS within a period of 12 weeks from the date of receipt of a copy of this order. The mother of the minor is permitted to withdraw the accrued interest once in six months for the benefit of the minor. No costs.

(D.K.K.,J.) (K.G.T.,J.)

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Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

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