



C.M.A.No.1543 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM : 06.04.2023

CORAM

THE HON'BLE MRS. JUSTICE N. MALA

C.M.A.No.1543 of 2020

1. Eashwari
2. Meghala
3. Kousalya

... Appellants

-VS-

1. The Special Officer
The Pallipalayam Farmers Service Co-operative Society Limited
S.No.208, Sangari Main Road,
Pallipalayam, Komarapalayam Taluk,
Namakkal District – 638006.

[R1 remained ex-parte before Tribunal. Hence notice to R1 dispensed with]

2. M/s. National Insurance Company Limited
Represented by its Divisional Office-1,
L.R.N. Complex,
Salem – 7.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 08.07.2020 made in M.C.O.P.No.61 of 2019 on the file of the Special District Judge/Motor Accident Claims Tribunal, Salem.

For Appellants : Mr.R.Shase
For R1 : Ex-parte before Tribunal
For R2 : Mr.D.Bhaskaran

JUDGMENT



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This Civil Miscellaneous Appeal is filed by the claimants against the Award and Decree made in M.C.O.P.No.61 of 2019, dated 08.07.2020, on the file of the Motor Accidents Claims Tribunal / Special District Judge, Salem.

2. The appeal is filed by the claimants challenging the Award and Decree on the ground that the Tribunal's finding that the claimants failed to prove the nexus between the injuries sustained by the deceased and the consequent death thereafter was erroneous and untenable.

3. The accident, negligence and liability are not disputed by the Insurance Company.

4. The only issue raised in this appeal is as to whether the deceased died due to the injuries sustained by him in the accident, which occurred on 19.05.2018. The claims Tribunal declined to grant any compensation as the nexus between the death and the injuries sustained by the deceased in the accident, was not proved. The claims Tribunal allowed the reimbursement of medical expenses alone of Rs.28,096/-. The claimants have therefore filed the above appeal.



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5. The learned counsel for the claimants /appellants submitted that the finding of the Tribunal was erroneous and unsustainable. Oral and documentary evidences were filed by the claimants to establish the nexus between the injuries sustained by the deceased in the accident and his consequent death. The learned counsel further submitted that on the side of the respondents, except the oral evidence of RW1, there was no documentary evidence and hence, in the absence of any contra evidence, the Tribunal ought to have allowed the Claim Petition and awarded compensation. The learned counsel further submitted that the only reason cited by the claims tribunal for rejecting the claim was non-production of the Postmortem Certificate and non-examination of the Doctor to establish the cause of death. According to the counsel both the reasons were erroneous as the tribunal failed to note that from the other evidences available on record, it was clear that the deceased died only due to the injuries sustained by him in the accident and therefore non-production of the Postmortem Certificate and non-examination of the Doctor was irrelevant.

6. The learned counsel for the second respondent on the other hand submitted that, by not filing postmortem report, the cause of death was not established and therefore, the finding of the Tribunal cannot be assailed. The



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learned counsel further submitted as the claimant's failed to examine the Doctor who treated the deceased and who would be best person to speak on the cause of death, the Tribunal rightly held that the Claim Petition was not maintainable. On the medical records produced by the claimants, the learned counsel submitted that the medical records were marked through C.W.1 who was not a Doctor, but Keeper of records and hence, he was not a competent person and the documents marked through him could not be relied on. The learned counsel therefore submitted that the claims Tribunal was justified in rejecting the Claim Petition and hence, the appeal is merit less.

7. I have heard both the learned counsels and perused the entire materials placed before me.

8. As earlier noted, the accident is not disputed and the injuries sustained by the deceased in the accident are also not disputed. The only dispute is with regard to the nexus between the injuries sustained by the deceased in the accident and the resultant death.

9. The vital issue is, if from the evidence available on record the nexus between the injuries sustained in the accident and the consequent



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death is established, should the claim be rejected on the grounds of non-production of Postmortem Certificate and Non-examination of the Doctor.

10. It is seen that the accident occurred on 19.05.2018 and the deceased was immediately taken to the Pallipalayam Government Hospital for treatment and he was later shifted to a private hospital at Erode, where he was treated as an in-patient from 19.05.2018 to 21.05.2018. The deceased was thereafter shifted to the Government Mohan Kumaramangalam Medical College Hospital, Salem and was admitted as an in-patient from 21.05.2018 to 31.05.2018. The deceased died on 01.06.2018. It is therefore seen that within twelve days of the accident, the victim died. Can it therefore be presumed that some intervening cause was the reason for the death, without any plea or evidence in this regard. It is no doubt true that the postmortem report was not filed by the claimants and any one of the Doctors who treated the deceased was not examined. For failure to bring the said evidences, can the other evidences both oral and documentary, be totally ignored. This is the interesting question to be answered in this appeal.

11. In the case of the *National Insurance Company Limited Vs. Anthony and Others* reported in *[2015 (4) ACC 750 Madras]*, this Court



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held that non production of postmortem report cannot be a ground for defeating the claim for compensation.

12. It is therefore to be seen as to whether the claimants have established the nexus between the accident injuries and death. C.W.1, who was a Record Clerk in the Government Mohan Kumaramangalam Medical College and Hospital, in his evidence, deposed that the deceased Mohan had undergone treatment in the Government Mohan Kumaramangalam Medical College and Hospital from 21.05.2018 to 31.05.2018 as an in-patient. Ex.C1, medical records of the deceased were marked through C.W.1.

13. The learned counsel for the second respondent/Insurance Company objected that the medical records marked through the Record Clerk, cannot be accepted. According to the counsel, the medical records ought to have been filed through the doctor who treated the deceased and on failure to do so, the same could not be relied on.

14. I am afraid that the contention of the learned counsel for the respondent cannot be countenanced as the medical records in question relate



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to a Government hospital and they were marked through the Record Clerk of the Government Hospital and therefore, their evidentiary value cannot be doubted.

15. It may have been different if the documents related to a private hospital, but as the records in the present case are that of the Government Hospital, I am of the view that the same can be relied on. The Accident Register dated 19.05.2018 marked as Ex.P2, Wound Certificate marked as Ex.P3 and the Discharge Summary marked as Ex.P7 show that the deceased Mohan sustained injuries in the accident. It is relevant to note here that in the discharge summary of the deceased marked as Ex.P7, the date of admission is shown as 19.05.2018, and the date of discharge is shown as 21.05.2018. The discharge summary was issued by the Bharani Paventham Multispeciality Hospital, Erode which is a private hospital. In the discharge summary, it was observed on comparison of the previous CT scan that *“extradural and subdural hemorrhage has increased, mid line shift has increased. Sub arachnoid haemorrhage and tentorial haemorrhage has appeared in today's scan”*. In the review column, the patient was advised emergency CT Brain and craniotomy as per neuro surgeon opinion and it was further observed that the patient was not willing for surgery and the patient was therefore referred to higher centre for further management.



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Thereafter, the deceased was shifted to the Government Mohan Kumaramangalam Medical College and Hospital.

16. In the discharge summary of Bharani Paventhan Multispeciality Hospital, it is seen that the deceased was admitted on 19.05.2018 and discharged on 21.05.2018. On an advice to refer the patient to higher centre for further management, the deceased was brought to Mohan Kumaramangalam Medical College and Hospital on 21.05.2018 at about 3.58 p.m. It is seen from the discharge summary of the Mohan Kumaramangalam Medical College and Hospital, Salem, that the deceased was treated from 21.05.2018 till he absconded on 31.05.2018 at 8.00 p.m. It is to be noted here that on the very next day, the deceased died.

17. I also find on perusal of the records in Ex.C1 series that the deceased underwent treatment for the injuries sustained by him in the accident continuously till 31.05.2018. Therefore, on the basis of the medical records of the Government Mohan Kumaramangalam Medical College and Hospital, it is clearly established by the claimants that the deceased died due to the injuries sustained by him in the accident.



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18. No doubt, it is true that the Doctors were not examined and the postmortem report was also not filed. But under the facts and circumstances of the case, I am of the view that as the medical records clearly establish continuous treatment from the date of accident till the date of death, the nexus between the accident and the consequent death is established by the claimants and therefore the burden is on the respondents to prove if there was any other intervening cause for death. On the facts of the case, I am of the view that the finding of the Tribunal on the said issue is unsustainable and the same is set aside.

19. The next question to be considered is the quantum of compensation to be awarded to the claimants.

20. Before addressing the said question two judgments of the Hon'ble Supreme Court on the general principles underlying the assessment of compensation in Motor Accident Cases viz., ***R.D.Hattangadi vs. Pest Control (India) Pvt., Ltd.***, reported in ***1995 (1) SCC 551***; ***C.K.Subramania Iyer and Others vs. T.Kunhikuttan Nair and Others*** reported in ***AIR 1970 SC 376*** are to be borne in mind. The Hon'ble Supreme Court stressed that in computing compensation in accident cases, some amount of guess work some hypothetical consideration and some amount of sympathy is involved.



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21. The case of the claimants is that the deceased was aged about 54 years at the time of accident and that as a Power Loom Weaver employed with M/s.V.K.P. Power Loom Factory, Tharkad, he was earning salary of Rs.15,000/- per month. The claimants therefore claimed the compensation of Rs.25,00,000/-. I find from the materials placed on record that absolutely, there is no evidence filed in support of salary drawn by the deceased.

22. Considering that the accident took place in the year 2018 and the deceased was aged about 54 years and maintaining a family of three members, I am of the view that the notional income of Rs.10,000/- may be fixed as the income of the deceased and 10% of the income of the deceased should be taken towards future prospects and therefore, the income would be Rs.11,000/- per month.

23. The deceased was aged 54 years at the time of accident, and therefore the appropriate multiplier would be '11'. The compensation therefore towards loss of income would be $[Rs.11000 \times 12 \times 11] = Rs.14,52,000/-$. If $1/3^{rd}$ of this amount is deducted towards the deceased's



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personal expenses [Rs.4,84,000/-], the amount towards loss of income would be $[Rs.14,52,000 - 4,84,000] = Rs.9,68,000/-$. The 1st claimant lost her husband and the other claimants lost their father and therefore, all the three claimants would be entitled to Rs.40,000/- each towards loss of consortium. The claimants are further entitled to Rs.15,000/- towards transport expenses and Rs.15,000/- towards funeral expenses. The award towards medical expenses is confirmed. In all, the claimants will be entitled for a sum of Rs.11,46,096/- along with interest at the rate of 7.5% per annum as compensation.

24. It is stated by both the learned counsels that the Insurance Company has deposited the medical expenses of Rs.28,096/- awarded by the Tribunal and the same was also withdrawn by the claimants. The Insurance Company is therefore directed to deposit the compensation fixed by this Court at Rs.11,18,000/- along with 7.5% interest within a period of eight weeks from the date of receipt of a copy of this order. The 1st claimant being the widow of the deceased would be entitled to Rs.7,18,000/- along with accrued interest and the claimants 2 and 3 the daughters of the deceased would be entitled to Rs.2,00,000/- each along with accrued interest.



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25. In the result, the Civil Miscellaneous Appeal is allowed without costs. The Judgment and Decree dated 08.07.2020 made in M.C.O.P.No.61 of 2019 on the file of the Special District Judge / Motor Accident Claims Tribunal, Salem is modified. The claimants/appellants are entitled to a total compensation of Rs.11,46,096/- as against Rs.28,096/- awarded by the Tribunal. The 2nd respondent/Insurance Company is directed to deposit the compensation amount of Rs.11,18,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.61 of 2019. On such deposit being made by the Insurance Company, the claimants are entitled to withdraw their respective share as mentioned above. The appellants are also directed to pay the Court fee, proportionate to the enhancement made in this appeal, if not already paid.

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Index : Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No
ssi

To:

1. The Special District Judge,



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Motor Accident Claims Tribunal,
Salem.

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

N.MALA.J.,

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