



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.07.2023

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.M.A.No.2193 of 2014

Narayanan (Died)

1.Maruthambal

2.Selvaraj

...Appellants

Versus

1.Shanmuganathan

2.The Manager,

New India Assurance Co. Ltd.,

No.64, W.B.Road, Tiruchirapalli.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to allow the Civil Miscellaneous Appeal and to set aside the decree and award dated 11.10.2013 passed in M.C.O.P.No.116 of 2009 on the file of Sub Court (Motor Accidents Claims Tribunal) Perambalur.

For Appellants	:	Mr.P.Paramasivadosh for Mr.R.Gokulakrishnan
For Respondent – 1	:	Mr.K.Natarajan
For Respondent – 2	:	Mr.C.Ramesh Babu



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellants (legal representatives of the deceased claimant Narayanan) against the decree and award dated 11.10.2013 passed by the Sub Court (Motor Accidents Claims Tribunal) Perambalur in M.C.O.P.No.116 of 2009.

2. The brief facts of the case are as follows:

On 15.03.1992, at about 3.30 p.m, when one Narayanan (father of the appellants herein) was riding a cycle on the left side of the National Highway No.45 and crossing a lorry which was stationed on the left side of the road, suddenly, a car bearing Registration No.TDYL 5464 belongs to first respondent and insured with second respondent which was proceeding from Trichy to Perambalur hit the said Narayanan behind his back side, due to which, his leg was crushed under the car wheel and he was unable to move. Therefore, the said Narayanan filed a claim petition in M.C.O.P.No.1168 of 1992 before the Principal District Court, Tiruchirapalli as against one K.V.Subramanian (then owner of the car) and the second respondent (insurance company).



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2.1. Then, the M.C.O.P.No.1168 of 1992 was transferred to Sub Court, Ariyalur and numbered as M.C.O.P.No.320 of 1992. The Sub Court, Ariyalur vide order dated 06.08.1996, dismissed the claim as against the second respondent (insurance company) and passed the award in favour of the claimant Narayanan by directing the said K.V.Subramanian (then owner of the car) to pay the compensation of Rs.40,000/- along with interest and costs to the claimant Narayanan. While so, the said Narayanan had died on 22.03.1999. Thereafter, the claim petition was transferred to Principal District Court, Perambalur and numbered as M.C.O.P.No.116 of 2009. On 22.06.2010, the appellants (legal representatives of the deceased Narayanan) were impleaded as petitioners 2 & 3 in M.C.O.P.No.116 of 2009.

2.2. In the meanwhile, the said K.V.Subramanian (then owner of the car) filed an application to set aside the award dated 06.08.1996 and the same was allowed. On 01.02.2011, one Shanmuganathan S/o. K.V.Subramanian was impleaded as first respondent in this case. After the death of Narayanan (original claimant), the appellants/claimants 2 & 3 had prosecuted the claim petition on behalf of the deceased Narayanan by claiming a sum of Rs.1,00,000/- as compensation towards the injuries sustained by the deceased Narayanan in the said road accident.



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3. Both the first respondent (owner of the car) and second respondent (insurance company) had filed their respective counter statement in M.C.O.P.No.116 of 2009 denying all the averments made by the appellants/claimants in the Claim Petition.

4. Before the Tribunal, in order to prove the averments in the claim petition, the first appellant examined herself as P.W.1 and 12 documents were marked as Exs.P1 to P12 on her side. On the side of the respondents, first respondent was examined as R.W.1 and two other witnesses were examined as R.W.2 & R.W.3, but, no document was marked as exhibit.

5. On an appreciation of the oral and documentary evidence produced before it, the Tribunal arrived at the finding that the claim petition is not maintainable since there is no cause of action that survive upon the legal representatives of the deceased claimant Narayanan. By arriving at such a conclusion, the Tribunal had dismissed the claim petition in M.C.O.P.No.116 of 2009. The operative portion of the award passed by the Tribunal is as follows:

“10. According to the petitioner 2 & 3, they being the legal representatives of the 1st petitioner/injured claimant, they are entitled to prosecute the claim petition and received compensation. On the contrary,



the contention of the respondent is that 1st petitioner/injured claimant didn't died due to the injuries suffered by him, that claim is for personal injuries, so, the legal representatives will not have any right that will survive upon them to prosecute the claim petition on behalf of the deceased 1st petitioner. The learned counsel for the respondents relied upon the reported decision of the Hon'ble High Court, Madras 2011 (1) TNMAC 826, New India Assurance Co. Ltd., rep. by its Manager Vs. I.S.Poornam W/o. Sithivinayagam, 2.M.Raju S/o.Manickam, where it is held as below:

“On coming to the instant case on hand as discussed in the foregoing paragraphs, the death of the injured claimant was not caused as a result of the accident and hence, this Court without any hesitation holds that the First Respondent/Second Claimant being the wife of the injured is not entitled to any relief as the cause of action does not survive to her. Though the arguments in this connection was put forth before the Motor Accident Claims Tribunal, unfortunately, the Tribunal has lost sight upon it and proceeded to pass an award of Rs.75,000/- without any justifiable cause. Under this circumstance, the award of the Tribunal is liable to be set aside.”

11. In view of the above case law, the legal representatives of injured claimant will not have any cause of action to survive upon them in the case of claim for personal injuries. In the case on hand the 1st petitioner died on 22.03.1999 as proved from the copy of death certificate in Ex.P8. Admittedly, the 1st petitioner didn't died due to the consequence of the injuries sustained in the accident, the accident has taken place on 15.03.1992. The 1st petitioner died on 22.03.1999 nearly 7 years after the accident. There is absolute no evidence as well as it is not the case of the petitioner 2 & 3 the deceased was died consequent in the injuries. R.W.1 has testified the 1st petitioner was murdered. This is not denied in the



cross examination. Therefore, the death of 1st petitioner was not caused due to the result of accident. Hence, the claim application is only for the personal damage/injury. As held in the case law mentioned supra, the petitioners 2 & 3 being the Legal representatives cannot prosecute the claim petition on behalf of the deceased injured claimant for personal damage. The claim for personal damage died with the 1st petitioner. Therefore, the petitioners 2 & 3 are not entitled to maintain and prosecute the claim petition on behalf of the deceased 1st petitioner/injured claimant. Hence, this petition is liable to be dismissed. This point is answered accordingly in affirmative.

Point Nos.2 & 3:

12. In view of finding in point No.1, as the claim petition is not maintainable, there is no cause of action that survive upon the legal representatives. Hence, there is no need for adjudicating the point 2 and 3. Hence, this petition is liable to be dismissed. Hence, these points are answered accordingly.

13. In the result, this petition is dismissed. No costs."

6. The learned counsel for the appellants submitted that it is not the dispute that the deceased claimant Narayanan met with a road accident on 15.03.1992 and due to which, he had sustained injuries. He further submitted that the appellants had claimed compensation only for the injuries sustained by the claimant Narayanan in the accident occurred on 15.03.1992 and they had not claimed that the claimant Narayanan had died due to the injuries he sustained in the accident occurred on 15.03.1992, but, the Tribunal had dismissed the claim petition by holding that the legal



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representatives of the injured claimant will not have any cause of action to survive upon them in the case of claim for personal injuries. The Tribunal had dismissed the claim petition under the impression that the appellants had prosecuted the claim petition by portraying the personal injuries sustained by the claimant Narayanan as if the injuries caused to him in the accident. Being the legal representatives of the deceased claimant Narayanan, the appellants are entitled to prosecute the claim petition on behalf of the deceased claimant Narayanan. Therefore, the learned counsel prayed this Court to set aside the decree and award dated 11.10.2013 passed by the Tribunal in M.C.O.P.No.116 of 2009. In support of his submissions, he has relied on the judgment, ***The Oriental Insurance Company Limited Vs. Kahlon @ Jasmail Singh Kahlon (deceased) through his Legal Representative Narinder Kahlon Gosakan & Another*** reported in ***CDJ 2021 SC 551***, wherein, the Hon'ble Supreme Court has held as follows:

“18. The Tribunal, on technicalities rejected his claim for salary, medical expenses and percentage of disability and granted a measly compensation of Rupees one lakh only by a cryptic order. We are, therefore, of the opinion that while the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal.



19. *In Parminder Singh (supra)* compensation on the basis of complete loss of income, the percentage of disability, future prospects were granted applying the relevant multiplier. Again, in *Kajal (supra)* the injured was assessed as 100 per cent disabled, considering all of which compensation was awarded on the notional future prospects along with relevant multiplier. The loss of income to the injured in the facts of the present case has to be assessed at 75%. In view of *Raj Kumar (supra)* there shall be no deduction towards personal expenses.

20. *We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's 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 the estate of the injured, subsequently deceased."*

7. *Per Contra*, the learned counsel appearing for the first respondent as well as the second respondent submitted in unison that no claim can be made for the personal injuries sustained by the injured. Further, the Tribunal had dismissed the claim petition on the ground that the legal representatives cannot prosecute the claim petition on behalf of the deceased injured claimant for personal damage and not on the ground that the legal representatives of the deceased claimant have claimed compensation for the injuries sustained by the deceased claimant in the accident.



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8. The learned counsel appearing for the first respondent submitted that at the time of accident, the insurance policy was in force. The original particulars of the insurance policy are available with the first respondent and he is ready to produce the same before this Court.

9. Heard the learned counsel on either side and perused the materials available on record.

10. Upon hearing the submissions made by the learned counsel on either side, it appears that the Tribunal had dismissed the claim petition on the pretext that the appellants had prosecuted the claim petition by claiming compensation for the personal injuries sustained to the deceased claimant Narayanan. However, the fact remains that the road accident was occurred on 15.03.1992, immediately, after the accident, the injured Narayanan had filed a claim petition before the Principal District Court, Tiruchirapalli, claiming compensation for the injuries sustained by him in the road accident. On 06.08.1996, the Sub Court, Ariyalur had passed the award in favour of the claimant Narayanan by directing the then owner of the car to pay the compensation of Rs.40,000/- along with interest and costs to the



claimant Narayanan. However, thereafter, the said award was set aside. In the meanwhile, the claimant Narayanan had passed away on 22.03.1999.

After his death, his legal representatives (wife & son of the deceased Narayanan) were impleaded as petitioners 2 & 3 in M.C.O.P.No.116 of 2009.

11. The appellants (legal representatives of the deceased claimant Narayanan) were impleaded as parties in the claim petition only for the purpose of prosecuting the claim petition on behalf of the deceased claimant Narayanan by claiming compensation for the injuries caused to the claimant Narayanan in the accident occurred on 15.03.1992. The appellants (legal representatives of the deceased claimant Narayanan) had also prosecuted the claim petition by claiming compensation for the injuries caused to the claimant Narayanan in the accident and they had not claimed any compensation for the personal injuries caused to the deceased claimant Narayanan. However, the Tribunal had dismissed the claim petition on the ground that the appellants (legal representatives of the deceased claimant Narayanan) had claimed compensation for the personal injuries caused to the deceased claimant Narayanan.



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12. Considering the above facts and circumstances of the case and also, in view of the dictum laid down by the Hon'ble Apex Court in the case of *The Oriental Insurance Company Limited Vs. Kahlon @ Jasmail Singh Kahlon (deceased) through his Legal Representative Narinder Kahlon Gosakan & Another* reported in **CDJ 2021 SC 551**, the decree and award dated 11.10.2013 passed by the Sub Court (Motor Accidents Claims Tribunal) Perambalur in M.C.O.P.No.116 of 2009 is set aside and the matter is remanded back to the Tribunal for fresh consideration. No costs.

13. Since the original claim petition is of the year 1992, the Sub Court (Motor Accidents Claims Tribunal) Perambalur is directed to dispose the M.C.O.P.No.116 of 2009, within a period of six months from the date of receipt of a copy of this order.

07.07.2023

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Index : Yes/No

Speaking Order (or) Non-Speaking Order



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KRISHNAN RAMASAMY, J.

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C.M.A.No.2193 of 2014

07.07.2023