



C.M.A.No.2932 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2932 of 2014

G. Prakash (Died)

1. Sathiyabama
2. Balakrishnan
3. Dhiviya

... Appellants / Petitioners

Vs.

1. S. Dharmalingam
[R1 remained ex-parte before Tribunal.
Hence notice to R1 dispensed with]
2. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore, Branch at Chennimalai Road, Erode.
3. Sandhu Mohammed
[R3 remained ex-parte before Tribunal.
Hence notice to R3 dispensed with]
4. United India Insurance Company Limited,
11/2, K. T. Complex, New Scheme Road,
Pollachi, Coimbatore District – 642 002.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 30.03.2011, made in M.C.O.P.No.165 of 2007, on the file of the Motor Accidents Claims Tribunal, Additional District Court and Fast Track Court No.I at Erode.



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For Appellants : Mr. Ma. P. Thangavel
For R1 : Dispensed with
For R2 : Mr. Murali Vidod
For R3 : Dispensed with
For R4 : Ms. I. Malar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants 2 to 4 claiming compensation of the Award passed in M.C.O.P.No.165 of 2007, dated 30.03.2011, on the file of the Motor Accidents Claim Tribunal, Additional District Court and Fast Track Court No.I, Erode.

2. The parties are referred to herein according to their status and ranking before the Tribunal.

3. The case of the claimants 2 to 4 is that the first claimant namely G. Prakash was a lorry driver and that on 30.08.2006 at about 7.45 p.m., he was driving the Lorry bearing Registration No.TCE 0093 from Salem to Pollachi, while he reached near Pallipalayam Road, Matheswaran Temple, a bus belongs to the second respondent being driven by its driver-



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first respondent, came in the opposite direction in rash and negligent manner, hit on the lorry, which resulted in causing severe injuries to the first claimant herein and after taking treatment in various places, he died on 27.11.2008. A criminal case was registered against the driver of the bus in Crime No.734 of 2006 under Sections 279 and 338 of IPC on the file of the Pallipalayam Police Station. The deceased was aged about 45 years and was earning a sum of Rs.6,000/- per month hence, the claimants 2 to 4 filed who are the legal heirs of the deceased filed Claim Petition, claiming compensation of Rs.4,00,000/- for the death of one G. Prakash in the road accident.

4. The first respondent is the driver, second respondent is the Transport Corporation, third respondent is the owner of the lorry which was driven by the first claimant/deceased and the fourth respondent is the insurer of the lorry. The first and third respondents remained ex-parte before the Tribunal and have not contested the case.

5. The second respondent-Transport Corporation filed counter and contended that the first respondent has driven the bus with due care and



caution but the deceased has driven the lorry in a negligent manner and caused the accident hence, the Transport Corporation is not liable to pay compensation. The nature of injuries sustained, income and other factors has to be proved by the claimants. The compensation claimed under various heads is also on the higher side hence, prays to dismiss the claim petition.

6. The fourth respondent filed counter and contended that the deceased/first claimant has driven the lorry with care and caution however, the driver of the bus, drove the same in rash and negligent manner, hit on the lorry, causing severe injuries to the lorry driver. He has also contended that the deceased was not died due to the injuries sustained by him and he died in spite of sufficient treatment given from the date of injuries and hence prays to dismiss the claim petition as against the fourth respondent.

7. Before the Tribunal, the claimants examined P.W.1 to P.W.5 and Exs.P1 to P7 were marked. On the side of the second respondent R.W.1 was examined and copy of Rough Sketch marked as Ex.R1 and treatment records/case sheet of the deceased was also marked as Ex.X1.



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8. Based on the evidence placed on record, the Tribunal in Point No.1 has dealt with the allegation of negligent act, on the part of the first respondent/driver of the Transport Corporation and has held that, the first respondent is responsible for the accident for his negligent act. In Point No.2, the Tribunal has considered whether the claimants have proved that the deceased was died due to the injuries sustained by him in the accident and has held that there is no evidence to show that the deceased succumbed to the injuries sustained in the accident. In Point No.3, the Tribunal has quantified the compensation and awarded Rs.65,300/- as compensation payable to the claimant.

9. Aggrieved over the compensation awarded and also against the finding that the deceased was not died due to the injuries sustained by the accident, the present Appeal has been filed by the claimants 2 to 4 herein.

10. The learned counsel for the claimants submitted that there are ample evidence to show that the nature of injuries sustained by the deceased in the accident held on 30.08.2006 and he had sustained severe



injuries in all over his body. The learned counsel further submitted that medical records produced by the claimants have not been properly appreciated by the Tribunal. The documentary evidence supports the case of the claimants that the deceased died only due to the injuries sustained by him, and also his death is not a natural death. Hence, prays to award more compensation and treating the case as a fatal case and also prays to enhance the compensation awarded by the Tribunal under other heads.

11. Per Contra, the learned counsel for the Transport Corporation submitted that there is a specific finding by the Tribunal that the deceased had died due to Septicemia on right leg in both bones. Due to the injury in right leg and also there is a categorical finding by the Tribunal that there is no evidence placed on record to show that, after 2006, the deceased has not undergone any treatment. Hence, this case could not be considered as a fatal case and that the claimants are not entitled to claim compensation as a fatal case but they are entitled to claim compensation only as an injury case. The fourth respondent is only a formal party and that they have not seriously contested the claim.



12. I have considered the rival submissions made on both sides and also perused the entire records.

13. The Tribunal after appreciating the evidence placed on record and came to the conclusion that the negligent act of the first respondent, who is the driver of the Transport Corporation is responsible for the accident. There is no challenge made regarding this finding of fact. The only issue to be decided herein is whether the deceased had died due to the injuries sustained by him in the road accident or he died by any other cause, which is not related to the road accident.

14. It is the evidence of P.W.1 that the accident was occurred on 30.08.2006 and thereafter, immediately he was taken to Senthil Neurology Hospital at Erode and he had undergone in-patient treatment for two weeks. Thereafter, he was shifted to Government Medical College Hospital, Coimbatore on 31.08.2006 and he had undergone treatment as in-patient till 27.12.2006. This evidence is supported by Ex.P3-Wound Certificate and Ex.P10-Treatment Note Book issued by the Government Medical College Hospital, Coimbatore.



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15. The claimants have also summoned the Duty Doctor of the Government Medical College Hospital, Coimbatore, to depose about the nature of treatment and injuries sustained by the deceased herein. P.W.3-Doctor stated that on 31.08.2006, the injured Prakash was admitted in ward, who was aged about 45 years due to the injuries sustained by him in the road accident. The Doctors have conducted various treatments including surgeries, by fixing rod to connect both bones in right leg. They have also done debridement and external fixing. He has also stated that external fixation was removed on 25.12.2006 and he was discharged from the hospital on 27.12.2006 and at the time of discharge, the external injuries were healing. The evidence of P.W.1 and P.W.3 shows that till 27.12.2006, the deceased had undergone in-patient treatment. P.W.1 has also stated that after discharging from the hospital the claimants have also regularly followed up treatment as out-patient at Pollachi Government Hospital. The injury to the right leg of the deceased was not adequately treated and, despite continuous treatment, injuries were not healed, leading to the development of septicemia, resulting in his death on 27.11.2008.



16. On perusal of Ex.A10-Patient Book in Kovai Medical College Hospital, shows that after discharging from the hospital on 27.12.2006, he was again admitted into the hospital repeatedly on 24.01.2007, 29.01.2007 and 15.02.2007. On 15.02.2007, an X-ray was done, and it was found that he must have continued treatment and he was not fully recovered from the injuries. There is yet another record from Pollachi Government Hospital stating that the fracture was cured on 05.04.2007, yet there is no proof that the injury was fully healed during the year 2007. Thereafter, in the very same Ex.A10-Patient Book in Kovai Medical College Hospital, the Doctors of Pollachi Government Hospital has continued recording of the treatment entries and on 04.05.2007 and subsequent dates, there are entries to show that this injuries were united and on 17.04.2007, the right leg's nonunion of both bones was noted specifically, and he was advised to have bone grafting, in addition to nailing. Following that, on 17.04.2008, it has been clearly stated that he underwent surgery to join both bones together using nailing, and thereafter, he had taken continuous treatment.



17. Ex.A10-Patient Book in Kovai Medical College Hospital is a clinching proof that till 17.04.2008, the claimant's injuries to both bones were not healed and there was no union and the deceased underwent various treatments to treat his injuries and separately surgery was also conducted on 19.04.2008 and nailing was also done to connect the bones and thereafter, he was discharged on 23.04.2008. By 03.05.2008, once again the deceased had visited hospital for follow up. Thereafter, by 07.05.2008, the deceased was treated as out-patient. The claimants had also examined P.W.5- Professor/Part-time adviser for the Private Lab namely Micro Biology Lab Assistant, who had conducted immuno test of the deceased blood and he has stated that on 05.08.2008, he has received sample blood of the deceased for conducting test and for his opinion. The Test was done on 07.08.2008 and the results showed that blood contains more than two bacterias. Again, according to the recommendation of the private doctor of Tiruppur, Dr.Rajarajan, another sample was taken from the deceased, and after testing, two bacteria were found, and test reports Exs.P11-P14 were marked. In his opinion, two bacterias were found from the collected sample, the second sample revealed that the deceased was in critical health condition.



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18. The combined reading of the evidence of P.W.3 to P.W.5, who are the Doctors and also Ex.A10-Patient Book in Kovai Medical College Hospital, X.1-Kovai Medical College Hospital medical cases records in detail and Lab Reports-Exs.P11 to P14 and the Discharge Summary of the Thayarammal Poly Clinic, Coimbatore-Ex.P8 shows that after the accident, the claimant/deceased was immediately admitted after the accident. He was regularly taking treatment from the Coimbatore Government Medical College Hospital. After the surgery, at initial stage and after healing external injuries he was discharged from the hospital and later, he was advised to undergo further follow up action and treatment at the Government Hospital at Pollachi. The records shows that on 17.08.2008, in spite of best treatment given by the Government Duty Doctors, non union of bones were noted and once again the deceased was suggested to undergo surgery for uniting both bones by using interlocking nails and bone grafting. Accordingly, he has also undergone further surgery at Thayarammal Poly Clinic and even thereafter, injuries were not cured. Subsequently, the injuries lead to Septicemia which resulted in causing death of the deceased.



19. As the evidence of Doctors and Experts who treated the deceased and exhibits presented in the form of medical records clearly reveals that the deceased diligently had undergone medical treatment from the time of his injury till he succumbed to fatal injuries. This Court is of the view that, findings of the Tribunal that there is no evidence to prove the death and the injuries sustained by him from the accident is not proper and the same is liable to be set aside. Hence, this Court is of the view that the claimants have made out the case that the deceased was died due to the accident and that they are entitled to get compensation as a fatal case. The claimants have not proved the income of the deceased before the Tribunal. Considering the year of accident, fixing Rs.5,000/- per month along with 25% future prospects is awarded under the head loss of income. Accordingly, compensation under the head Loss of Income is fixed as follows: Notional income Rs.5,000/- per month and the annual income is Rs.60,000/- [5000 x 12] after deducting 1/3 for personal expenses a sum of Rs.40,000/- [60000 x 1/3] and 25% Future Prospects to be added a sum of Rs.50,000/- is arrived and the applicable multiplier as per the Judgment of the Hon'ble Supreme Court in *Sarla Varma and Ors vs. Delhi Transport Corporation and Another [AIR 2009 SC 3104]*, is '14' to be applied.



Accordingly, arrived a sum of Rs.7,00,000/- [50000 x 14] under the head Loss of Income.

20. As far as the compensation awarded under other heads are concerned such as, Loss of Consortium a sum of Rs.40,000/- each [Spouse consortium and Filial consortium] a sum of Rs.1,20,000/- [40000 x 3] is granted. The compensation awarded under the head Funeral Expenses and Loss of Estate a sum of Rs.15,000/- each i.e., totally a sum of Rs.30,000/- is granted. Since the deceased has taken treatment at Government Hospital, this Court is inclined to grant attender charges for a period of four months accordingly, a sum of Rs.12,000/- [3000 x 4] is granted under the head Attender Charges by fixing Rs.3,000/- per month. The Tribunal awarded compensation under the other heads are just fair and reasonable and the same is hereby confirmed.

21. Thus the compensation awarded by the Tribunal under various heads are modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Pain and Sufferings	Rs.30,000/-	Rs.30,000/-	Confirmed
2.	Medical Expenses	Rs.30,265/-	Rs.30,265/-	Confirmed
3.	Transportation Charges	Rs.5,000/-	Rs.5,000/-	Confirmed
4.	Loss of Income	----	Rs.7,00,000/-	Granted
5	Loss of Consortium	----	Rs.1,20,000/-	Granted
6	Funeral Expenses and Loss of Estate	----	Rs.30,000/-	Granted
7	Loss of income during treatment period	----	Rs.20,000/-	Granted
8	Attender Charges	----	Rs.12,000/-	Granted
	Total	Rs.65,265/-	Rs.9,47,265/-	Enhanced by Rs.8,82,000/-

23. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.65,265/- is hereby enhanced to Rs.9,47,265/- [Rupees Nine Lakhs Fortsy Seven Thousand Two Hundred and Sixty Five only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent/State Transport Corporation is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period



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of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.165 of 2007, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast Track Court -I, Erode. On such deposit, the claimants 2 to 4 are permitted to withdraw the award amount, now determined by this Court, as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount, if any, already withdrawn. Since, this Court has enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

21.09.2023

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Additional District Judge,Fast Track Court No.I,
Motor Accidents Claims Tribunal, Erode.

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

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K.RAJASEKAR,J.

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