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C.M.A. No. 497 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 497 of 2014

Appavoo

... Appellant/ Petitioner

Vs.

1. K. Subramani

2. The Branch Manager,
United India Insurance Co. Ltd.,
Divisional Office, No.2, Sankaran Road,
Namakkal.

3. Kandasamy

4. Chinthamani

5. Pavayee

... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 26.11.2012 passed in M.C.O.P. No. 411 of 2008 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Tiruchengode.

For Appellant : Mr. C. Kulanthaivel

For RR 1,3 to 5 : Dispensed with

For R2 : Mr. M. J. Vijayaraghavan



JUDGMENT

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This Civil Miscellaneous Appeal is filed by the claimant challenging the dismissal of the claim petition as per the award dated 26.11.2012 in M.C.O.P. No. 411 of 2008 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Tiruchengode.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. The case of the claimant is that on 14.02.2002 at about 8:30PM, the deceased Veeran was walking near Pattaraimeedu, Thiruchengode, at that time, a lorry bearing Registration No. TN-28-A-2937 driven by its driver in a rash and negligent manner, dashed on the Veeran, caused severe injuries, resulted in causing death on the spot. A criminal case was also registered against the lorry driver in Cr. No. 126 of 2002 u/s. 279 and 304-A of IPC on the file of the Tiruchengode Town Police Station. For the loss of the deceased Veeran, his son named Appavoo has filed a claim petition seeking a sum of Rs.5,00,000/- under section 166 of the Motor Vehicles Act.



4. The second respondent - insurance company has filed a counter and stated that the respondents 3 to 5 herein have filed a separate claim petition before the Subordinate Court at Sankari in M.C.O.P. No.89 of 2002 impleading the claimant herein as third respondent. In that petition, they have stated that the age of the deceased as 62 years. Since another claim petition has been filed by the family members of the deceased and also the claimant herein is impleaded there as third respondent, prays to dismiss the claim petition. The second respondent - insurance company also submitted that the lorry driver is not responsible for the accident and first and second respondents are not liable to pay any compensation.

5. The issue regarding maintainability of the claim petition on the basis of Ex.R.1 - claim petition in M.C.O.P. No.89 of 2002 on the file of the Sub Court, Sankari was considered by the Tribunal and held that by surpassing the previous claim petition, this petition has been filed, hence two claim petitions are not maintainable and subsequently, the claim petition filed by the appellant herein was dismissed.

6. Aggrieved over the dismissal of the claim petition, the claimant



has filed this appeal to set aside the award on the ground that he has not filed any other claim petition before any Court and other claim petition filed by the respondents 3 to 5 were also dismissed for default, which was not taken into consideration by the Tribunal at the time of dismissing the claim petition.

7. The learned counsel appearing for the claimant has submitted that the claimant and respondents 3 to 5 adduced complete evidence for the purpose of deciding the matter on merits. However, the Tribunal on technicality (i.e.,) on the basis of previous claim petition, which was dismissed for default, has refused to grant compensation to the claimant. Hence, the same is liable to be set aside and prays to grant compensation.

8. Per contra, the learned counsel appearing for the Insurance Company has submitted that the respondents 3 to 5 have already filed a claim petition on M.C.O.P. No. 89 of 2002 on the file of Subordinate Court, Sankari, which was filed in the year 2002 itself and thereafter, it was dismissed for default. Since the suppression of the fact is a serious issue and the Tribunal has taken into account that the claimant herein has already



been impleaded in the earlier claim petition, in which he is also a party, Tribunal has rightly held that the filing of another claim petition is not maintainable, so dismissed the claim petition filed by the appellant herein, hence prays to confirm the award of the Tribunal.

9. Heard the submissions made on both sides and perused the materials available on record:

10. Admittedly, the M.C.O.P. 89 of 2002 filed earlier by the respondents 3 to 5 herein have not been reached its logical end and it was dismissed for default. Subsequently, at the time of recording the evidence, the claimant has categorically admitted in the cross examination that the pendency of the claim petition was known to him and the same was dismissed for default in the year 2004 itself. Hence, after adding other dependants as parties, the claimant has filed this claim petition. The insurance company also not denied the fact that earlier claim petition filed by the respondents 3 to 5 was dismissed for default and so far it is not restored. Hence, it is clear that so far no compensation has been granted in any of the claim petitions.



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11. The copy of the order in M.C.O.P. No. 781 of 2004 which was dismissed for default on 26.10.2004 produced before this Court shows that the M.C.O.P. No. 89 of 2002 has been transferred, re-numbered as M.C.O.P. No. 781 of 2004 and subsequently, it has been dismissed for default, which was prior to the award passed in the M.C.O.P. No.411 of 2008, which is impugned herein.

12. The Tribunal has not verified the status of the previous claim petition and passed the order of dismissal. Hence, this Court is of the view that since no compensation is awarded so far in any of the claim petition, the claimant herein is entitled to his claim. The Tribunal ought to have granted compensation to the claimant herein along with respondents 3 to 5. The deceased Veeran died in the year 2002, and now, this Court is considering the present appeal filed in the year 2013, the remanding petition for fresh considering of the Tribunal would further delay the process for considering the claim of the compensation, hence, this Court is of the view that based on the evidence placed on record, the claim petition shall be decided by this Court.



13. To prove the negligent act on the part of the driver of the lorry bearing Registration No. TN-28-A-2937, P.W.2 - eyewitness was examined and he has deposed that on 14.02.2002 at about 8:30PM, the P.W.2 was standing near Pattaraimeedu, at that time, a 52 years aged man was walking on the left hand side of the road towards Tiruchengode, at that time, a lorry bearing Registration No. TN-28-A-2937 came in the opposite direction in high speed, lost control and hit on the deceased. Due to which, the pedestrian sustained grievance injuries and died. In the cross examination, he has stated that he was not examined by the police for the criminal case and except this suggestion, the respondent has not adduced any contra evidence to P.W.2. Immediately after accident, a criminal case in crime No. 126 of 2002 U/s. 279 and 304-A of IPC was also registered against the driver of the lorry corroborates the case of the claimants. Since, no contra evidence has been adduced to disprove the evidence of P.W.2, same shall be accepted and non-examination of P.W.2 by the Police during investigation alone is not a ground to disbelieve his evidence.

14. Even though, in the claim petition, the claimant has stated that the age of his deceased father Veeran is 50 years, in the cross examination,



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he has admitted that his father's age is 62 years at the time of the accident.

The claimant herein is aged about 46 years at the time of occurrence of the accident i.e., in the year 2002, hence, this Court is of the view that the age of the deceased Veeran shall be 62 years at the time of accident. Since, the accident was taken place in the year 2002 and considering the age of the deceased, this Court is inclined to fix the monthly notional income of the deceased as Rs.3,000/-. Accordingly, the compensation under the head loss of income is summed as follows:

Annual income (Rs.3,000/- x 12)	= Rs.36,000/-
After Deduction (1/3) of the total salary	= Rs.24,000/-
Applicable Multiplier	= 7
Total compensation (Rs.24,000/- x 7)	= Rs.1,68,000/-

15. Considering the date of accident, this Court is inclined to award Rs.15,000/- each under the head funeral expenses and loss of estate and this Court is inclined to award Rs.1,00,000/- totally to the claimant and Respondents 3 to 5 under the head loss of consortium.

16. Accordingly, the compensation awarded by this Court under various heads are as follows:



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S.No	Description	Compensation Awarded (Rs)
1.	Loss of income	1,68,000/-
2.	Loss of consortium	1,00,000/-
3.	Loss of estate	15,000/-
4.	Funeral expenses	15,000/-
	Total Compensation	2,98,000/-

17. In the result, this Civil Miscellaneous Appeal is allowed and the award of dismissal of the claim petition by the Tribunal is set aside. This Court hereby awards compensation for a sum of **Rs.2,98,000/- [Rupees Two Lakh and Ninety Eight Thousand only]** together along with interest at the rate of 6% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of the Savings Bank Account of the claimant and respondent 3 to 5, who are the legal heirs of the deceased Veeran. On such deposit, the claimants, who are the legal heirs of the deceased Veeran are permitted to withdraw the award amount now determined by this Court with



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equal apportionment. Since this Court has awarded the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the compensation awarded. There shall be no order as to costs in the present appeal.

05.09.2023

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Sub-Judge,
Motor Accident Claims Tribunal,
Tiruchengode.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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