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C.M.A.No.1030 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

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1.Nathiya

2.Minor Sandhiya

3.Minor Durga

4.Narayanaswamy

5.Govindammal

.. Appellants

(Minor appellants 2 & 3 represented
by the mother and guardian, the 1st
petitioner Nathiya)

Vs.

1. A.G.Mithul Ram

(Since R1 remained exparte before the
Tribunal and his presence is dispensed with)

2.United India Insurance Company Limited
No.134, Greams Road, Silingi Building
R.O.Legal Department 4th floor
Chennai-600 006.

.. Respondents



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.10.2018 made in M.A.C.T.O.P.No.3234 of 2016 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes Court, Chennai.

For Appellants : Mr.F.Terry Chellaraja
For R2 : Mr.J.Michael Visuvasam

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 29.10.2018 made in M.A.C.T.O.P.No.3234 of 2016 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2. The appellants filed M.A.C.T.O.P.No.3234 of 2016 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, claiming a sum of Rs.25,00,000/- as compensation for the death of one Murali, who died in the accident that took place on 20.12.2013.

3. According to the appellants, on the date of accident, while the deceased Murali was travelling as a passenger in the bus bearing Registration



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No.TN 25 AC 9666 from Polur to Mel Tiruttani, the driver of the bus belonging to the 1st respondent, after stopping the bus, suddenly moved the said vehicle, in a rash and negligent manner. Due to the said impact, Murali fell down from the bus, sustained multiple grievous injuries and he died on 07.01.2016.

4. Before the Tribunal, both the respondents 1 & 2, owner and insurer of the bus respectively, remained exparte.

5. Before the Tribunal, the 1st appellant, wife of the deceased examined herself as PW1, one Subramani, an eye-witness to the accident was examined as P.W.2 and 12 documents were marked as Exs.P1 to P12. The respondents did not let in any oral and documentary evidence.

6. The Tribunal considering the pleadings, oral and documentary evidence, dismissed the claim petition. Aggrieved by the said judgment, the appellants have come out with the present appeal.



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7. Learned counsel appearing for the appellants submitted that the Tribunal denied the claim of the appellants on the ground that they have not established the nexus between the accident and death of the deceased. The appellants had established the nexus between the injuries sustained in the accident and the death of the deceased. The deceased had filed the claim petition seeking compensation for the injuries suffered by him. However, in any case, the Tribunal ought to have awarded compensation for the injuries suffered by the deceased. However, the Tribunal had erroneously dismissed the entire claim petition. Hence, this appeal.

8. Learned counsel for the 2nd respondent/Insurance Company per contra, submitted that no evidence was let in by the appellants to show the nexus between the accident and death of the deceased. In the absence of any evidence, the Tribunal was right in dismissing the claim petition. Learned counsel further submitted that even with regard to injury and the loss suffered by the deceased, no evidence was adduced on the side of the appellants. Hence, the learned counsel prayed for dismissal of the appeal.



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9. Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent/Insurance Company and perused the entire materials available on record.

10. This Court finds from the record that the claim petition was originally filed by the deceased Murali. Subsequently on his death, the prayer in the claim petition was amended and the appellants were shown as parties. The accident took place on 20.12.2013 and the deceased died on 07.01.2016. It is seen from the records that the appellants have not established the fact that the deceased died due to the injuries suffered by him in the accident. There is no evidence to show that the deceased was under continuous treatment and in spite of the treatment, he died. The appellants have also not produced any other document to establish the nexus between the accident and death. Therefore, this Court is of the view that the Tribunal was right in holding that the appellants have not established the nexus between the accident and death of the deceased.



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11. However, this Court is of the view that the Tribunal ought to have considered the injuries suffered by the deceased at the time of accident and ought to have awarded compensation for the said injuries. According to the appellants, due to the accident, the deceased suffered head injury, fractures of mandible, symphysis mandible left, condyle mandible, upper lip laceration and plate has been fixed. As per the discharge summaries/Exs.P2 and P3, the deceased Murali took treatment as an in-patient in the Government Dental College Hospital, from 21.12.2013 to 28.12.2013. The appellants have claimed that the deceased was aged about 36 years and was working as a Mason at the time of accident. The nature of injuries and the treatment taken by the deceased show that he could not have worked for nearly four months. Considering the age of the deceased and the fact that he was working as a Mason and year of the accident, this Court fixes the notional income at Rs.10,000/- per month and appellants are entitled to the compensation at Rs.40,000/- (Rs.10,000/- X 4 months) towards loss of income. Since the deceased was admitted as an in-patient in the hospital for nearly 10 days, the appellants are entitled to Rs.10,000/- each towards transport charges, extra



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nourishment and attendant charges. Therefore, this Court is of the view that the appellants are entitled to compensation of Rs.70,000/-, break up details as follows:

Sl. No	Description	Amount awarded by this Court (Rs)
1.	Loss of income	Rs.40,000/-
2.	Transport Charges	Rs.10,000/-
3.	Extra nourishment	Rs.10,000/-
4.	Attendant charges	Rs.10,000/-
	Total	Rs.70,000/-

12. In the result, the Civil Miscellaneous Appeal is partly allowed. A sum of Rs.70,000/- is awarded as compensation to the appellants together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st appellant being wife of the deceased is entitled to a sum of Rs.50,000/- and the appellants 2 and 3, who are daughters of the deceased, are entitled to Rs.10,000/- each as compensation. It is made clear that the appellants are not entitled for any interest for the delay period on the



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amount of Rs.70,000/- as per the order of this Court dated 18.04.2022 made

in C.M.P.No.4309 of 2022 in C.M.A.SR.No.97007 of 2021. The appellants

are directed to pay necessary Court fee, if any on the compensation awarded by this Court. The 2nd respondent is directed to deposit the award amount now determined by this Court, along with interest and costs, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st appellant is permitted to withdraw her respective share of the award amount now determined by this Court, along with proportionate interest and costs. The share of the minors/appellants 2 and 3 is directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st appellant being the mother of the minor appellants 2 and 3 is permitted to withdraw the accrued interest once in three months for the welfare of the minors. No costs.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

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SUNDER MOHAN, J

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To

1. II Judge, Small Causes Court
The Motor Accident Claims Tribunal
Chennai.
- 2.The Section Officer
V.R. Section,
High Court, Chennai.

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Dated: 28.07.2023