



C.M.A.No.1736 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1736 of 2020

1.Selvi

2.Sathya

... Appellants

Vs.

1.Dr.Sangh Vis Homeopathy Clinics Pvt. Ltd.,
No.2, 15th Avenue,
Harrington Cresent,
Chennai – 600 031.
[since R1 remained exparte before the Tribunal
his presence may be dispensed with]

2.Bajaj Allianz General Insurance Company Limited,
No.25/26, Prince Tower,
IV Floor, College Road,
Nungambakkam,
Chennai – 600 034.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 02.07.2018 made in M.A.C.T.O.P.No.3336 of 2012 on the file of the Special Sub Court No.2, Motor Accident Claims Petitions, Small Causes Court, Chennai (Special Sub Judge No.2, to deal with MCOP Cases, Chennai).



For Appellants : Ms.A.Subadra
For Respondents : No appearance [R1]
Ms.R.Rathna Thara [R2]

JUDGEMENT

Assailing the judgment and decree passed by the Tribunal in and by which the Tribunal had awarded lower compensation, the present appeal has been filed by the claimants/appellants seeking enhancement of compensation.

2. As per the claim petition, on 25.05.2012 that about 08.00 hours, when the deceased Saroja was walking on the road, the car bearing Regn.No.TN-01-AC-0326, driven by the driver in a rash and negligent manner, dashed against the deceased, due to which, he sustained fatal injuries and died on 13.06.2012. Therefore, the claimants, claiming compensation for the death of the deceased, had filed the claim petition.

3. Initially, the claimants had claimed a sum of Rs.6,00,000/- and the Tribunal had passed an award by setting the respondents, viz., the owner of the vehicle and the insurer of the vehicle ex-parte, which was thereafter set aside and the matter was remanded for taking up the claim petition afresh.



Upon remand, the claimants filed miscellaneous petition to seek enhancement of claim to a sum of Rs.30,00,000/- which was allowed.

4. Before the Tribunal, the claimants examined four witnesses as P.W.1 to P.W.4 and marked 17 documents viz., Ex.P.1 to Ex.P.17. No witnesses were examined nor any documents were marked on the side of the respondents. The claim petition was taken up by the Tribunal and by the impugned award, compensation in a sum of Rs.17,000/- was ordered, against which the claimants have preferred the present appeal seeking enhancement.

5. The learned counsel appearing for the appellants/claimants submitted that, the deceased sustained grievous injuries and had taken treatment and, thereafter, succumbed to the injuries sustained by her. Therefore, the death being on account of the injuries sustained by the deceased, however, without properly appreciating the same, the Tribunal had held that death was not on account of the injuries, which is erroneous. Placing reliance upon Ex.P-16 and the evidence of the Doctor, P.W.3, submitted when the doctor had opined that death was due to complication of the injuries sustained by the deceased, the findings arrived at by the Tribunal that the injuries was not the cause for the



death, is wholly perverse and arbitrary and the same is liable to be interfered with by granting compensation for the death of the deceased.

6. Per contra, the learned counsel appearing for the second respondent/insurance company submitted that, the Tribunal had given a categorical finding that death was not on account of the injuries sustained by the deceased and had, in fact, had gone in detail into the various injuries suffered by the deceased to give the aforesaid finding. In the absence of any positive material to show that the deceased died on account of the injuries sustained in the accident, the finding recorded by the Tribunal does not require any interference.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The present appeal is filed seeking enhancement contending that the injuries suffered by the deceased had led to her demise. In this regard, the Tribunal has taken a painstaking effort to detail the injuries, which the



deceased had suffered in the accident. A careful perusal of the materials reveal that the injuries suffered by the deceased are in the nature of fracture. However, the doctor, had opined that the complications as a result of the injuries sustained by the deceased had resulted in the death of the deceased. However, the doctor had not gone on to depose as to how the injuries had affected the health of the deceased so as to result in her death. The doctor had merely stated that complications had led to death, without detailing the nature of complication. Mere statement of the doctor in the absence of a clear opinion on the basis of relevant reasoning cannot be the basis for the court to accept the opinion of the doctor that the deceased had died on account of the complications resulting from the injuries.

9. While the claimants claim that the death was on account of injuries, it is the duty of the claimants to establish that the injuries were the root cause for the death of the deceased and the injuries and the death are intricately connected that but for the injuries, the deceased would not have died. In the absence of such evidence unerringly pointing out that the death was the result of the injuries, on the stray evidence of the doctor that the deceased died on account of complications arising out of the injuries cannot be the basis to hold



that the death of the deceased was intricately connected with the injuries. The said factum had been rightly appreciated by the Tribunal and the finding rendered in this regard does not require any interference.

10. Once this Court holds that the death was not the result of the injuries, then it would be necessary for this Court to deal with the claim petition on the basis of the injuries suffered by the injured, who has since deceased.

11. The discharge summary of the deceased is marked as Ex.P-6, which shows that the deceased was an in-patient in the hospital from 29.05.2012 to 04.06.2012. Necessarily, it reveals that the deceased was discharged, which shows that the deceased would have been in a state, which would not have been precarious so as to enable the hospital to infer that her discharge would not have a detrimental effect in her health. In this regard, a careful perusal of the discharge summary details the injuries sustained by the deceased, more particularly the fracture suffered by her for which she had taken treatment. Though no disability has been fixed by the doctor at the time of discharge, however, it cannot be negated that the fractures, which the deceased would



have suffered, which have been dealt with in extenso by the Tribunal would definitely have a bearing in the deceased leading a normal life, had she survived. In such circumstances, this Court feels that the fractures suffered by the deceased would have rendered her mobility to some extent, considering her age to be around 60 years and being conscious of the same, this Court fixes the disability at 30% and the nature of the injuries demand that percentage method is to be adopted and by fixing Rs.3,000/- per percentage of disability, the compensation under the head disability is arrived at Rs.90,000/- (30% * Rs.3000/-).

12. The deceased would definitely have taken treatment after her discharge and would necessarily have entailed some amount towards medical expenses. This Court, considering the nature of injuries, fixes a sum of Rs.25,000/- as the expenses expended towards treatment. Necessarily the deceased would also have taken the assistance of an attendar considering her age and under the head “Attendar charges”, a sum of Rs.10,000/- is awarded. Further, the injuries suffered and the consequential treatment taken by her would definitely have been painful and under the head “Pain and Suffering”, this Court awards a sum of Rs.25,000/- and towards “Extra Nourishment” a



sum of Rs.5,000/- is awarded. Insofar as the compensation awarded under the head “hospital charges”, no compensation can be awarded under such head as the same is not a conventional head, which attract any compensation.

13. The amount of Rs.5,000/- and Rs.2,000/- awarded by the Tribunal towards “Transport to Hospital” and “Damage to Clothing and Articles” are confirmed.

14. In all, the compensation awarded by the Tribunal is modified as under :

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Transport to hospital	5,000/-	5,000/-
2	Damage to clothing and articles	2,000/-	2,000/-
3	Disability (30%)	-	90,000/-
4	Treatment expenses	-	25,000/-
5	Attender charges	-	10,000/-
6	Pain and Sufferings	-	25,000/-
7	Extra nourishment	-	5,000/-
8	Hospital charges	10,000/-	-
	Total	17,000/-	1,62,000/-



15. Accordingly, the civil miscellaneous appeal is partly allowed and the impugned award of the Tribunal is modified, enhancing the compensation amount from **Rs.17,000/-** to **Rs.1,62,000/-**. The second respondent/insurance company is directed to deposit the said amount to the credit of M.A.C.T.O.P.No.3336 of 2012 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants as per the apportionment of the Tribunal, through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants/claimants. There shall be no order as to costs in the present appeal.

13.12.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp



C.M.A.No.1736 of 2020

M.DHANDAPANI, J.,

sp

To

1.The Special Sub Court No.2, Motor Accident Claims Petitions, Small Causes Court, Chennai.

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

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