



C.M.A. (MD)No.321 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.321 of 2021

and

C.M.P.(MD)No.2716 of 2021

The New India Assurance Company Ltd.,
No.41, Nageswaran Sannithi Street,
Kumbakonam,
Thanjavur District.

...Appellant/ 2nd Respondent

Vs.

J.Irudayaraj (died)

1.K.Premi Sakay
2.K.Jenet Pavithra
3.B.Prakasam

...Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to modify the decree and judgment dated 19.11.2019 made in M.C.O.P.No.1795 of 2013 on the file of the Special District Judge, Tiruchirappalli.

For Appellant : Mr.A.Ilango

For R1 & R2 : Mr. T.Selvan



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For R3 : No Appearance

JUDGMENT

Challenging the quantum fixed by the Claims Tribunal fixing the compensation of Rs.10,83,696/-, the Insurance Company has preferred the present appeal.

2.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i) For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

(ii)Originally, the claim petition was filed by the insurer/first petitioner claiming compensation of Rs.5,00,000/- for the injuries sustained by him in a motor accident. According to him, on 12.09.1999, while he was riding his TVS moped bearing Registration No.TCY 544 at about 15.00 hours near Veereswaram Junction Road in Amma Mandapam to Membalasali east west road, an ambassador car bearing Registration No. TN-59-A-5859 coming in the opposite direction



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driven by its driver in a rash and negligent manner dashed against him, as a result, he was thrown out in the road and sustained multiple grievous injuries all over his body including fracture in his both legs. He was taken to Veerasamy Hospital at Thillainagr, wherein he was admitted as an inpatient and both of his legs were operated.

(iii)He filed an application claiming compensation of Rs.5,00,000/- for the injuries sustained by him in the said accident. The said petition was pending for more than 11 years, some way or the other. It appears that the first petitioner/original claimant died in the year 2012, during the pendency of the claim petition. Thereafter, his legal heirs have been impleaded in the claim petition and they have filed an amendment application claiming enhanced compensation of Rs.25,00,000/-, contending that the first petitioner was died due to the injuries sustained in the accident and due to that accident, he has voluntarily retired from service in the year 2004, whereas his retirement falls only in the year 2010.

3.It is the case of the Insurance Company that the accident was occurred due to the contributory negligence on the part of the first petitioner. In the counter



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affidavit, it has been stated that after a lapse of eleven days, the first petitioner has lodged the FIR in collusion with the owner and driver of the offending vehicle. The case has been filed in the year 2000. But, the first petitioner was examined only on 15.03.2005. Subsequently, due to the delay caused by the petitioners, the petition was pending for a long time. It is the main contention of the Insurance Company that though the second and third petitioners are entitled to for the estate of the first petitioner, they are not entitled for the death benefits as the deceased died only due to some natural causes.

4.To substantiate the case, before the tribunal, on the side of the claimants P.W.1 to P.W.7 were examined and Ex.P1 to Ex.P23 were marked and on the side of the respondents R.W.1 was examined and Ex.R1 to Ex.R2 were marked. Ex.X1 and Ex.X2 were also marked.

5.The trial Court, after analyzing the oral and documentary evidence adduced on both sides, held that the accident had taken place due to the rash and negligent driving of the first petitioner. Further, the trial Court has also held that there was no nexus between the accident and the death of the first petitioner, since he died after 11 years of the accident. However, the trial Court considering the



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voluntary retirement in the year 2004 adopted the relevant multiplier and fixed the compensation as follows:

S.No.	Head	Amount
1.	Compensation for partial permanent disability	Rs. 98,000/-
2.	For pain and sufferings	Rs. 75,000/-
3.	Loss of earning capacity	Rs. 7,87,791/-
4.	Attender charge	Rs. 10,000/-
5.	Nutritious Food	Rs. 5,000/-
6.	Transport Expenses	Rs. 5,000/-
7.	Partial loss of income	Rs. 13,802/-
8.	Medicine and Medical Expense	Rs. 89,103/-
	Total	Rs.10,83,696/-

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

6.It is the contention of the learned counsel for the appellant that originally a sum of Rs.5,00,000/- was claimed by the deceased/original claimant for the injuries sustained by him and the said claim petition was filed in the year 2000. But for somehow or the other, the said claim petition was dragged for a



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period of 12 years. On 17.03.2012, after the death of the first petitioner, the legal representatives have been impleaded and they have filed an amendment petition claiming compensation of Rs.25,00,000/-. He submitted that there is no nexus between the death and the accident. Further, when the person who claims compensation dies, the cause of action also dies with that person. At the most the legal heirs are entitled to the estate of the deceased such as medical charges, attendance charges, nutritious charges and transport etc.,. But, the Tribunal has adopted the multiplier and fixed the compensation for loss of earning capacity, which is not in accordance with law. Hence, he seeks to set aside the award.

7.The learned counsel for the respondents would submit that the tribunal has adopted the relevant multiplier after taking note of the fact that the first petitioner, after the accident, was not able to attend his regular work and took voluntary retirement and also by considering his monthly salary. Hence, the compensation awarded by the Tribunal does not require any interference.

8. In the light of the above submission, now the points arise for consideration in this appeal are:



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(1)Whether the legal heirs are entitled to claim compensation beyond the loss of estate of the deceased?

(2)Whether the multiplier method adopted by the tribunal is proper in the eye of law?

9. The negligence is not disputed by the Insurance Company, only quantum is challenged in this appeal. Admittedly, the accident had taken place on 12.09.1999, while the deceased was riding his TVS moped and he sustained injuries in the said accident. Immediately, he was admitted in the hospital. For certain fractures in his legs, he took treatment. He has originally filed an application claiming compensation of Rs.5,00,000/-.

10.Though the original claim petition was filed in the year 2000, for somehow or the other, the application got dragged till 2012, till the date of death of the original claimant. Thereafter, the legal heirs have been impleaded in the claim petition and thereafter, they sought for an amendment seeking enhanced compensation of Rs.25,00,000/- contending that there is a loss of earning capacity to the deceased and he died due to the injuries sustained by the accident in the year 1999.



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11. P.W.1, the first petitioner/ original claimant was also examined in the year 2005 and extensively cross examined before the tribunal. His evidence itself clearly shows that he suffered only fractures in his legs and he had taken treatment in the hospital for a period of four months from the date of accident. According to him, he has spent about Rs.1,00,000/- for surgery in his both legs. Further, during the period when he was taking treatment, he only got half of his salary. Further, he proceeded to his job only in the car and he has spent a sum of Rs.38,000/- towards the same.

12.It is relevant to note that in the cross examination he has clearly admitted that after the treatment period of four months from the date of accident, he was regularly working in his job as Teacher for more than five years and he was also drawing salary. Thereafter, he had applied for voluntary retirement. From the admission of P.W.1/original claimant in his cross examination, it is made clear that he had undergone treatment only for a period of four months and not beyond that. The above admission runs to the contrary of the stand of the respondents, who are the legal heirs of the original claimant that the deceased died only due the injuries sustained in the accident occurred in the year 1999. The evidence of the wife of



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the original claimant, who was examined as P.W. 6, itself clearly shows that his husband was died due to the heart pain and not due to the injuries sustained in the accident. Further P.W.7, Doctor's evidence also clearly shows that the deceased was having diabetic and Blood Pressure.

13. Having considered these documents, the trial Court has rightly found that there was no nexus between the injuries and the death of the original claimant. The exhibits, filed to show that the original claimant sustained serious injuries, indicate that the original claimant has only sustained fractures in his legs. Therefore, this Court is of the view that when the deceased himself has categorically admitted that even after the treatment, he worked as a Teacher for a period of five years and thereafter only, he took voluntary retirement, the question of granting compensation under the head of loss of earning capacity does not arise at all. The tribunal has in fact misdirected itself in awarding compensation on the said head by applying multiplier.

14.It is seen from the award that the Tribunal has fixed the disability at 49% as partial permanent disability. The Tribunal has applied the multiplier 13 after taking note of the date of accident and the date of death of the original



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claimant. The tribunal has awarded the compensation towards loss of earning capacity to the tune of Rs.7,87,790.64/-.

15. The Tribunal also relied on Ex.P14 to show that the first respondent has applied for voluntary retirement because of the injuries sustained in the accident. On perusal of Ex.P14, this Court is at a loss to understand as to how the tribunal has considered this document as an application for voluntary retirement. Ex.P14 is a letter sent by the original claimant to the Headmaster of the School seeking some particulars of his salary in the event of his continuance to the work till the date of his superannuation. The very letter itself clearly indicates that he has voluntarily retired on 01.06.2004 and he has sent the said letter seeking some particulars for claiming compensation. Therefore, merely on the basis of the said letter, it cannot be presumed that because of the injuries sustained in the accident, he could not work in the school and hence, he took voluntary retirement. Such finding of the tribunal is without any evidence and an improper appreciation of evidence and the same has to be necessarily set aside.

16.From the admission of the original claimant, it is very clear that he worked for about five years after the date of accident. It is well settled that when



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the death was not due to the accident or the injuries sustained in the accident, the legal heirs are only entitled to the loss of estate such as the medical charges attendant charges, nutritious charges and transportation etc..

17.In the judgment of the Hon'ble Division Bench of this Court in the case of **Branch Manager, Oriental Insurance Company Ltd., vs. Manohar and others** reported in **2017 (2) TN MAC 81 (DB)**, it has been held that in the absence of any nexus between the injuries and the death, compensation awarded by the tribunal fixing the liability at 100% is set aside applying the legal maxim of *actio personalis moritur cum persona*, for claiming compensation for the expenses incurred. Therefore, this Court is of the view that the legal heirs of the original claimant are entitled to loss of estate such as medical expenses, attender charges etc.,

18.However, the claim with regard to the pain and sufferings and future loss of income is personal to the injured alone and cannot be continued after his death. As there is no proximity between the injury and death in the present case, the award of the tribunal in awarding compensation for loss of earning capacity and also for pain and suffering suffered by the original claimant is not sustainable



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in the eye of law. The tribunal has fixed the disability at 49% as partial permanent disability and awarded a sum of Rs.2,000/- per each percentage of disability. This Court is of the view that the award of the tribunal under the head of permanent disability has to be increased to Rs.3,000/- (Rupees Three Thousand only). As the deceased, has also underwent surgery in different hospitals in his both legs, the attendant charges granted by the Tribunal is enhanced to Rs.50,000/- (Rupees Fifty Thousand Only) and award under the nutritious food is also enhanced to Rs.50,000/- (Rupees Fifty Thousand only).

19. Accordingly, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal is modified as hereunder:

S.No.	Head	Amount
1.	Compensation for partial permanent disability	Rs.1,47,000/-
2.	Medical Bills	Rs. 89,103/-
3.	Attendant charges	Rs. 50,000/-
4.	Nutritious Food	Rs. 50,000/-
5.	Loss of earning during the treatment as per the evidence of P.W.1	Rs. 13,802/-
6.	Transportation Charges	Rs. 20,000/-
	Total	Rs.3,69,905/- (Rs.3,70,000 rounded off)



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20.The appellant is directed to deposit the entire compensation amount as modified by this Court with interest at the rate of 6% per annum and costs to the credit of M.C.O.P.No.1795 of 2023, on the file of the Motor Accident Claims Tribunal / Special District Court, Tiruchirappalli within a period of one month from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the first respondent herein is permitted to withdraw a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) and the second and third respondents are permitted to withdraw a sum of Rs.85,000/- (Rupees Eighty Five Thousand Only) each, less the amount, if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

10.03.2023

NCC : Yes / No

Index : Yes/No

Internet : Yes/No

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- To
- 1.The Motor Accident Claims Tribunal,
Special District Court, Trichirappalli.
 - 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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