



C.M.A(MD)No.168 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.168 of 2019

and

C.M.P(MD)No.2226 of 2019

M/s.United India Insurance Company Limited,
No.280, Main Road,
1st Floor, Mettupalayam-641 301. ... Appellant/2nd Respondent

Vs.

1.Nirmala ... Respondent/1st Petitioner
2.Banumathi ... Respondent/2nd Petitioner
3.Ruba ... Respondent/3rd Petitioner
4.Jeganathan ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside order of the tribunal of Motor Accident Claims Tribunal cum Special District Court, Thiruchirapalli made in M.C.O.P.No.395 of 2013 dated 24.11.2015 and allow the appeal.

For Appellant : Mr.C.Jawahan Ravindran

For R1-R3 : M/s.J.Balameenakshi



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JUDGMENT

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The present appeal has been filed by the insurance company challenging an award passed by the Motor Accident Claims Tribunal, Madurai in M.C.O.P.No.395 of 2013.

2. According to the claimants, the deceased was travelling as a pillion rider in a two wheeler. At about 4.30 p.m on 28.02.1995, a lorry belonging to the 1st respondent and insured with the 2nd respondent was driven in a rash and negligent manner and dashed against the two wheeler. As a result of the said impact, he sustained grievous injuries. He was originally admitted to Government Hospital Kunnur on 28.02.1995 and thereafter, he was admitted to Ramakrishna Hospital, Coimbatore. According to the claimants, the deceased had passed away on 09.01.2000 at Trichy. The claimants sought for a compensation of Rs.15,00,000/-.

3. The owner of the offending vehicle had remained ex parte and the insurance company had filed a counter contending that the death is not relatable to the injuries said to have been sustained by the deceased person in the accident. Though the accident is said to have taken place in the year 1995, only after the death, the claim petition has been filed. The insurance company also disputed the quantum of compensation.



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4. The tribunal after considering the oral and documentary evidence, came to a conclusion that the deceased had passed away only due to the injury sustained by him in the vertebral column and due to the said injury, he was bed ridden and he was infected and thereafter he passed away.

5. The tribunal awarded a sum of Rs.3,36,000/- towards loss of dependency, a sum of Rs.30,000/- towards loss of love and affection, a sum of Rs.20,000/- towards loss of consortium, a sum of Rs.10,000/- towards funeral expenses and a sum of Rs.10,000/- towards transportation charges. Totally, a sum of Rs.4,06,000/- was awarded by the tribunal. Challenging the same, the present appeal has been filed.

6. According to the learned counsel appearing for the insurance company, the claimant is said to have sustained grievous injuries while he was travelling as a pillion rider in a two wheeler on 28.02.1995. The deceased was admitted to the Government hospital and later, he is said to have been treated in Ramakrishna Hospital, Coimbatore for a period of 5 days. Thereafter, there are no medical records whatsoever to establish the

fact that the claimant was taking continuous treatment from the date of the accident. There are no records to establish that the deceased could not



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recover from his injuries till his death. He further contended that P.W.2 who is the doctor, is said to have given treatment only from November 1999 onwards. No medical records are placed before the Court for the treatment taken by the deceased from the date of accident till his death. Therefore, there is no connection whatsoever to the death of the deceased person with the injury sustained by him at the time of the accident. Therefore, the tribunal was not right in considering the accident as a death case and proceeded to award compensation. He further pointed out that for the death of the said Chithambaram, the claim petition has been filed after a period of 10 years, namely 19.02.2010.

7. Per contra, the learned counsel appearing for the respondents/claimants had contended that the deceased has sustained grievous injuries in the accident that happened on 28.02.1995. He was taking continuous treatment in the private hospital and he is succumbed to the injuries on 09.01.2000. This could be proved from the examination of P.W.2 and Exhibit P.23 medical records. When the death is relatable to the accident and the injuries sustained in the said accident, the tribunal was right in awarding compensation for the death of the husband of the 1st claimant. Hence, he prayed for confirming the award passed by the tribunal.



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8. I have carefully considered the submissions made on either side.

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9. Admittedly, the deceased had sustained grievous injuries in a road traffic accident while he was travelling as a pillion rider in a two wheeler on 28.02.1995. In fact, he himself has lodged an F.I.R before Wellington Taluk Police station on 28.02.1995 at about 06.30 p.m. In the said F.I.R, he had pointed out that he had sustained injuries in the hip, vertebral coloumn and in the hands. Exhibit P.2 reveals that he was admitted to Ramakrishna Hospital, Coimbatore on 01.03.1995 and discharged on 06.03.1995. However, the dates have been wrongly noted as 01.05.1995 and 06.05.1995. Therefore, it is clear that the said Chithambaram had sustained injuries in a road traffic accident and he was originally admitted to Government hospital, Kunnur and later, admitted to Ramakrishna Hospital, Coimbatore.

10. The said Chithambaram had passed away on 09.01.2000. However, the claimants have not filed a single document to establish the fact that he was taking treatment from March 1995 till 09.01.2000. Though they have examined a doctor as P.W.2, his evidence does not evince confidence of the Court. Even as per the deposition of the said doctor, he had attended to the deceased only from November 1999. In his cross-examination, he had deposed that the deceased had undergone a



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surgery in Ramakrishna hospital. However, no such record has been placed before the Court. Exhibit P.23 is the prescription said to have been issued by the said doctor which is a notebook. A perusal of the said document indicates that he was given treatment from 01.11.1999 onwards which indicates that the patient was conscious and bed ridden. A perusal of the said prescription does not reveal that the said Chithambaram was suffering from any injuries which he had sustained at the time of accident. Though Exhibit P.23 reveals that the doctor has recommended for a post-mortem, for the reasons best known, it has not been conducted. Therefore, this Court is of the opinion that the said Chithambaram had not died due to the injuries sustained by him at the time of the accident.

11. From the perusal of the records, it is clear that the said Chithambaram had sustained some grievous injuries at the time of the accident on 28.02.1995 as a pillion rider in a two wheeler, which is covered by a package policy. Therefore, certainly he is entitled to receive compensation for the injuries sustained by him. However, the said claim petition has not been filed when he was alive. But only 10 years after his death, the said claim petition has been filed.



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12. The claimants have not placed on record any medical bills relating to the expenses incurred by the family towards the treatment of the deceased person. Therefore, this Court is inclined to award a sum of Rs.1,00,000/- which will carry interest at the rate of of 7.5% from the date of the claim petition. The award of the tribunal, namely Rs.4,06,000/- is hereby modified and reduced to Rs.1,00,000/- with 7.5% interest. The 1st claimant shall be entitled to Rs.50,000/- and the claimants 2 and 3 shall be entitled to Rs.25,000/- each.

13. With the said observations, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

05.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Motor Accident Claims Tribunal
cum Special District Court,
Thiruchirapalli.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR,J.

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Judgment made in
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