



C.M.A. (MD) No. 718 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.09.2023

Pronounced on : 26.09.2023

CORAM:

THE HON'BLE MR. JUSTICE K. MURALI SHANKAR

C.M.A. (MD) No. 718 of 2019

The Managing Director,
Tamil Nadu State Transport Corporation,
Virudhunagar.

... Appellant/
Respondent

Vs.

1. M. Karupiah (Died)

2. K. Muneeswari

3. K. Muthukumar

4. K. Vanapetchi

5. K. Vaikundamoorthi

6. K. Karthi

7. K. Marimuthu

... Respondents

(Respondents 2 to 7 are brought on record as LRS of the deceased sole respondent vide Court order dated 29.08.2023 made in CMP(MD) No. 7591, 7594 and 7597 of 2023 in CMA(MD) No. 718 of 2019)



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Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 12.04.2019 in M.C.O.P.No.177 of 2018 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Virudhunagar Camp at Srivilliputtur.

For Appellant : Mr.K.Sudalayandi

For R2 to R7 : Mr.M.Boopathi Pandian

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.177 of 2018 dated 12.04.2019 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Virudhunagar District @ Srivilliputtur.

2. The appellant/Transport Corporation, who was made liable to pay compensation of Rs.2,63,300/- (Rupees Two Lakhs Sixty Three Thousand and Three Hundred only) with interest at 7.5% per annum and costs to the claimant for the disability suffered by him, consequent to an accident occurred on 25.03.2015, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.



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3. It is pertinent to note that though the appellant has challenged the liability, the learned counsel appearing for the appellant would submit that they are only disputing the quantum of compensation awarded at, by the Tribunal.

4. Pending appeal before this Court, the claimant had died and as such, his wife, daughter and sons have been impleaded as respondents 2 to 7.

5. The case of the claimant is that due to the accident, he was thrown out of the two wheeler, that he sustained injuries on his right leg and also in the fingers and other injuries all over his body, that he was immediately taken to Government Hospital, Sivakasi and was discharged on 26.03.2015, that subsequently he was admitted in Kumaran Hospital, Thiruthangal and was discharged on 05.04.2015, that he has suffered permanent disability and that he is not in a position to do any work as before.

6. The claimant has produced the wound certificate, medical bills, medical prescriptions, X-ray and lab reports under Ex.P.2 to Ex.P.4 and



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Ex.P.7 to Ex.P.9. The claimant was referred to the Medical Board and the disability certificate issued by the Medical Board has been exhibited as Ex.C.1. It is evident from Ex.C.1 that the Medical Board, after examining the claimant, has fixed the disability at 34%. Considering the medical evidence available on record, the Tribunal, taking note of the injuries suffered and the consequent disability sustained, has rightly adopted the percentage method and granted disability compensation at Rs.1,19,000/- (Rs.3,500/- x 34). The learned counsel appearing for the appellant would submit that the amount of Rs.3,500/- awarded per percentage is too high and the same may be reduced. Considering the fact that the accident was occurred on 25.03.2015 and the other attending circumstances, awarding Rs.3,500/- per percentage is very much reasonable and the same cannot said to be excessive.

7. The Tribunal, taking note of the medical bills, has rightly awarded Rs.49,793/- towards medical expenses.

8. Though the claimant has alleged that he was doing agricultural work and was getting Rs.10,400/- per month, he has not produced any iota of materials to substantiate the same. Considering the nature of job and the



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age of the claimant, the Tribunal has fixed the monthly income at Rs.6,500/- and granted loss of income for 3 months at Rs.19,500/. Considering the nature of the injuries and the period of treatment, this Court is inclined to grant loss of income for 4 months at Rs.26,000/-.

9. Moreover, the Tribunal has granted Rs.2,000/- for transport expenses and Rs.3,000/- for loss of dress and articles. The Tribunal has also granted Rs.10,000/- for extra nourishment, Rs.30,000/- for pain and suffering and Rs.30,000/- for future medical expenses. As already pointed out, pending appeal, the claimant had died and his legal representatives are now prosecuting the appeal. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***The Oriental Insurance Company Limited Vs. Kahlon @ Jasmail Singh Kahlon (Deceased) and others*** reported in **2021 (2) TNMAC 305**, wherein, the Hon'ble Apex Court has held that while the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal and the relevant passages are extracted hereunder:-



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“9. The Act is a beneficial and welfare legislation.

Section 166(1)(a) of the Act provides for a statutory claim for compensation arising out of an accident by the person who has sustained the injury. Under Clause (b), compensation is payable to the owner of the property. In case of death, the legal representatives of the deceased can pursue the claim. Property, under the Act, will have a much wider connotation than the conventional definition. If the legal heirs can pursue claims in case of death, we see no reason why the legal representatives cannot pursue claims for loss of property akin to estate of the injured if he is deceased subsequently for reasons other than attributable to the accident or injuries under Clause 1(c) of Section 166. Such a claim would be completely distinct from personal injuries to the claimant and which may not be the cause of death. Such claims of personal injuries would undoubtedly abate with the death of the injured. What would the loss of estate mean and what items would be covered by it are issues which has to engage our attention. The appellant has a statutory obligation to pay compensation in motor accident claim cases. This obligation cannot be evaded behind the defence that it was available only for personal injuries and abates on his death irrespective of the loss caused to the estate of the deceased because of the injuries.



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10. In *Umed Chand (supra)*, giving a broad liberal interpretation to the provisions of the Act so that legal representatives do not suffer injustice, it was observed that the claim for personal injuries will not survive on death of the injured unrelated to the accident but the legal representatives could pursue the claim for enhancement of the claim for loss of the estate which would include expenditure on medical expenses, travelling, attendant, diet, doctor's fee and reasonable monthly annual accretion to the estate for a certain period. It is trite that the income which a person derives compositely forms part of the expenditure on himself, his family and the savings go to the estate. The unforeseen expenses as aforesaid naturally have to be met from the estate causing pecuniary loss to the estate.

11. In *Maimuna Begum (supra)* the defence under Section 306 of the Indian Succession Act, 1925 on the old English Common Law maxim “*actio personalis moritur cum persona*” was rejected opining that it would be unjust to non-suit the heirs on that ground.

12. In *Venkatesan (supra)*, the injured claimant preferred an appeal dissatisfied, but was deceased during the pendency of the appeal. Compensation came to be awarded under the Act for loss of estate keeping in mind the nature of



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the injuries, the treatment, the expenditure incurred and loss of income.

13. In Surpal Singh (supra), Justice K.S. Radhakrishnan, C.J. (as he then was), observed that the Act was a social welfare legislation providing for compensation by award to people who sustain bodily injuries or get killed. The grant of compensation had to be expeditious as procedural technicalities could not be allowed to defeat the just purpose of the act. The Courts in construing social welfare legislations had to adopt a beneficial rule of construction which fulfils the policy of the legislation favorable to those in whose interest the Act has been passed. Judicial discipline demanded that the words of a remedial statutes be construed so far as they reasonably admit so as to secure that relief contemplated by the statute and it shall not be denied to the class intended to be relieved. Rejecting the maxim of “actio personalis moritur cum persona” on the premise that it was an injury done to the person and the claim abated with his demise it was observed:

“11. The question as to whether injury was personal or otherwise is of no significance so far as the wrong doer is concerned and he is obliged to make good the loss sustained by the injured. Legal heirs and legal representatives



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would have also suffered considerable mental pain and agony due to the accident caused to their kith and kin. Possibly they might have looked after their dear ones in different circumstances, which cannot be measurable in monetary terms. We are therefore in full agreement with the view expressed by the learned Single Judge of this Court in Gujarat State Road Transport Corporation's case (supra) that even after death of the injured, the claim petition does not abate and right to sue survives to his heirs and legal representatives."

14. This view has subsequently been followed in a decision authored by brother Justice M.R. Shah J., (as he then was) in Madhuben Maheshbhai Patel vs. Joseph Francis Mewan and Others, 2015 (2) GLH 499, holding as follows:

"12....Considering the aforesaid decision of the Division Bench of this Court in the case of Surpal Singh Ladhubha Gohil (supra); decisions of the learned Single Judge of this Court in the case of Jenabai Widow of Abdul Karim Musa (supra) and in the case of Amrishkumar Vinodbhai (supra); and aforesaid



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two decisions of the learned Single Judge of the Rajasthan High Court, we are of the opinion that maxim “actio personalis moritur cum persona” on which Section 306 of the Indian Evidence Act (sic Indian Succession Act) is based cannot have an applicability in all actions even in an case of personal injuries where damages flows from the head or under the head of loss to the estate. Therefore, even after the death of the injured claimant, claim petition does not abate and right to sue survive to his heirs and legal representatives in so far as loss to the estate is concerned, which would include personal expenses incurred on the treatment and other claim related to loss to the estate. Under the circumstances, the issue referred to the Division Bench is answered accordingly. Consequently, it is held that no error has been committed by the learned Tribunal in permitting the heirs to be brought on record of the claim petition and permitting the heirs of the injured claimant who died subsequently to proceed further with the claim petition. However, the claim petition and even appeal for enhancement would be confine to the claim for the loss to the estate as observed



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hereinabove.”

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15. Similar view has been taken by the Punjab & Haryana High Court in Joti Ram vs. Chamanlal, AIR 1985 P&H 2 and the Madras High Court in Thailammai vs. A.V. Mallayya Pillai, 1991 ACJ 185 (Mad).

16. The view taken in Kanamma (supra) and Uttam Kumar (supra) that the claim would abate is based on a narrow interpretation of the Act which does not commend to us. The reasoning of the Gujarat High Court is more in consonance with aim, purpose and spirit of the Act and furthers its real intent and purpose which we therefore approve.

.....

18. The Tribunal, on technicalities rejected his claim for salary, medical expenses and percentage of disability and granted a measly compensation of Rupees one lakh only by a cryptic order. We are, therefore, of the opinion that while the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal.

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20. *We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's fee, etc. including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased.*

21. *However, the compensation under the head pain and suffering being personal injuries is held to be unsustainable and is disallowed. The High Court has not awarded anything towards medical expenses despite hospitalisation for six months being an admitted fact. We therefore award a sum of Rs.1,00,000/- towards medical expenses....”*

10. Applying the above dictum laid down by the Hon'ble Supreme Court, the respondents 2 to 7 are not entitled to get any amount towards pain and sufferings and future medical expenses. Considering the nature of the treatment and the inpatient treatment period and the disability sustained, this Court is inclined to grant Rs.15,000/- for transport expenses, Rs.20,000/- for extra nourishment and Rs.5,000/- for loss of



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dress and articles. Hence, this Court concludes that the respondents 2 to 7 are entitled to get total compensation of Rs.2,34,793/-.

11. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,63,300/- (Rupees Two Lakhs Sixty Three Thousand and Three Hundred only) is hereby reduced to **Rs.2,34,793/- (Rupees Two Lakhs Thirty Four Thousand Seven Hundred and Ninety Three only)** together with interest at 7.5% per annum and costs from the date of petition till realization and out of the said compensation amount, the second respondent is entitled to get **Rs.1,34,793/- (Rupees One Lakh Thirty Four Thousand Seven Hundred and Ninety Three only)** and the respondents 3 to 7 are entitled to get **Rs.20,000/- (Rupees Twenty Thousand only)** each. The appellant/Transport Corporation is directed to deposit the modified award amount with interest and costs to the credit of M.C.O.P.No.177 of 2018 on



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the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Virudhunagar District @ Srivilliputtur, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 2 to 7 are permitted to withdraw their shares together with interest and costs, on due application before the Tribunal. If the amount was already deposited, the balance amount shall be withdrawn by the appellant/Transport Corporation. Parties are directed to bear their own costs.

26.09.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The Motor Accident Claims Tribunal/
Chief Judicial Magistrate Court,
Virudhunagar District @ Srivilliputtur
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.718 of 2019

Dated : 26.09.2023