



C.M.A.(MD)No.593 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.08.2023

Pronounced on : 08.09.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.593 of 2019

M/s Royal Sundaram General Insurance Co. Ltd.,
through its Branch Manager,
Office at: A.T.P Tower, 5th Floor,
12-A, Bye pass Road,
Madurai-625 010.

... Appellant/
2nd Respondent

*(cause title accepted vide Court order dated 30.07.2019
made in CMP(MD)No.5947 of 2019 in CMA(MD)No.
SR20924 of 2019)*

Vs.

1. S.Malayappan
2. S.Gunasekaran
3. S.Ananthu

... Respondent Nos.1
to 3/claimants

4. The Correspondent,
The Leaders Matriculation School,
Surakkudi Road, Kadambavanam Village,
Karaikudi-630 602,
Sivagangai District.

... Respondent No.4/
1st Respondent

5. S.Manivannan

... Respondent No.5/
3rd Respondent



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... Respondent No.6/
4th Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order dated 29.01.2019 made in M.C.O.P.No.849 of 2017 on the file of the Motor Vehicles Accident Claims Tribunal IV Additional District Judge, Madurai and allow this appeal.

For Appellant : Mr.M.Jerin Mathew

For R1 to R3 : Mr.K.Mahendrans

For R4 to R6 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.849 of 2017 dated 29.01.2019 on the file of the Motor Accident Claims Tribunal/IV Additional District Court, Madurai.

2. The appellant/second respondent/insurer, who was made liable to pay compensation of Rs.3,54,300/- (Rupees Three Lakhs Fifty Four Thousand and Three Hundred only) with interest at 7.5% per annum to the respondents 1 to 3/claimants for the death of Rm.Swaminathan, consequent to an accident occurred on 16.07.2012, challenged the liability



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mulcted on it and also the quantum of compensation awarded at, by the Tribunal.

3. The case of the respondents 1 to 3/claimants is that on 16.07.2012 at about 03.30 p.m., the deceased Rm.Swaminathan was riding his bicycle on Karaikudi – Suragudi bye pass road from South to North in the extreme left side of the road, that when he was proceeding near VAO colony, Karaikudi, a Swaraj Mazda bus bearing Registration No.TN-63-S-8636, which came in the opposite direction in a rash and negligent manner, dashed against the said Rm.Swaminathan and as a result of which, he was thrown out of the bicycle and sustained serious injuries, that the said Rm.Swaminathan, due to the complications of the injuries sustained by him, died on 13.09.2015 and that the accident was occurred only due to the rash and negligent driving of the Swaraj Mazda bus driver.

4. It is the further case of the respondents 1 to 3/claimants that the deceased was aged 78 years at the time of accident and that he was working as a store keeper/security guard and was earning Rs.7,500/- per month.



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5. The defence of the appellant/second respondent is that when the Swaraj Mazda driver was driving the bus carrying school children in a moderate speed, the deceased, who was riding a bicycle from the opposite direction, lost his balance when the bus was crossing him and came into contact with the right rear portion of the bus and fell down and as a result of which, he sustained injuries and that the accident was occurred only due to the rash and negligence on the part of the deceased and as such, the appellant/second respondent is not liable for the claim.

6. During enquiry, the respondents 1 to 3/claimants have examined the third respondent/third claimant Anandhu as P.W.1 and the medical officer Dr.Nagarajan as P.W.2 and exhibited 24 documents as Ex.P.1 to Ex.P.24. The respondents 4 to 6/respondents 1, 3 and 4 had remained *ex parte*. The appellant/second respondent has adduced neither oral nor documentary evidence.

7. The points that arises for determination are :

1) Whether the Tribunal erred in giving a finding that the deceased had died due to the injuries sustained in the accident, despite showing that the claimants have miserably failed to produced



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any evidence correlating the death to the injuries sustained in the accident?

2) *Whether the impugned award dated 29.01.2019 is liable to be interfered with?*

8. Admittedly, complaint with regard to the accident was lodged by the third respondent/third claimant-P.W.1 and according to P.W.1, when he was proceeding in a two wheeler, he had seen the accident and that when his father was moving in a bicycle from Karaikudi – Suragudi, a school bus driver, who came in the opposite direction in a rash and negligent manner, had dashed against his father and as a result of which, his father sustained injuries all over his body. Though P.W.1 was subjected to cross-examination by the appellant/second respondent's side, his evidence with regard to the mode of accident was not at all shaken during his cross-examination.

9. As already pointed out, the appellant/second respondent has not adduced any evidence. Though the appellant/second respondent has taken a defence that the accident was occurred only due to the negligence on the part of the deceased and the driver of the fourth respondent/first



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respondent was not at fault, they have not chosen to examine the driver of the school bus or any other witness, who had witnessed the occurrence. In the absence of any contra evidence, the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the fourth respondent/first respondent's driver, cannot be found fault with.

10. It is the case of the respondents 1 to 3/claimants that after the accident, the injured Rm.Swaminathan was taken to Government Hospital, Karaikudi and after first aid treatment, he was referred to Government Rajaji Hospital, Madurai and subsequently, he was admitted as inpatient at P.K.N. Medical Centre, Karaikudi on 16.07.2012 and was discharged on 30.07.2012, that he underwent operation on 21.07.2012 and that he had taken treatment as outpatient till his death i.e., on 13.09.2015.

11. According to the respondents 1 to 3/claimants, the said Rm.Swaminathan had died consequent to the complications of the injuries sustained by him in the accident occurred on 16.07.2012. The appellant/second respondent has taken a specific stand that the death of the said Rm.Swaminathan has occurred long after the accident and that the same was due to natural causes unconnected with the accident.



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12. The respondents 1 to 3/claimants have produced the wound certificate, accident register extract issued by Karaikudi Government Hospital, outpatient slip issued by the said hospital, letter issued by the said hospital referring the patient to Government Rajaji Hospital, Madurai, discharge summary, certificate issued by P.K.N. Medical Centre, Karaikudi, medical prescriptions, medicine bills, E.C.G report and copy of the case sheet of Rm.Swaminathan issued by P.K.N. Medical Centre, Karaikudi under Ex.P.2, Ex.P.7 to Ex.P.13 and Ex.P.24.

13. The appellant/second respondent has specifically admitted the injuries sustained by the deceased and the treatment taken therefor consequent to the accident occurred on 16.07.2012, but disputed the treatment allegedly taken from the first week of September 2015 till his death on 13.09.2015.

14. Ex.P.11-certificate issued by P.K.N. Medical Centre is dated 04.09.2015 but with respect to the treatment expenses at Rs.40,000/- for the surgery conducted on 21.07.2012. Ex.P.12 and Ex.P.13-medical prescriptions and medicine bills relates to the treatment taken in the year



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2012. It is evident from Ex.P.7-accident register extract that the deceased Rm.Swaminathan has sustained the following injuries (1) 1 x ½ x ½ cm laceration on right side forehead, (2) 1½ x ½ x ½ cm laceration over left side nose, (3) multiple abrasion over right hand and (4) both bone right lower limb fracture and as per the wound certificate issued by P.K.N. Medical Centre under Ex.P.2, right leg bone injury has been certified as grievous injury. No doubt, Duty medical officer of Government Hospital, Karaikudi has referred the injured Rm.Swaminathan to Government Rajaji Hospital, Madurai for CT brain and Orthopedic management vide letter under Ex.P.9. Ex.P.24-copy of the case sheet issued by P.K.N. Medical Centre is with respect to the treatment given in the month of July 2012.

15. It is not known as to whether CT brain scan was taken for the alleged head injuries sustained by the deceased Rm.Swaminathan. P.W.2-medical officer attached to P.K.N. Medical Centre, Karaikudi would depose about the treatment given in July 2012 and more particularly, with regard to the open reduction internal fixation done on 21.07.2012. P.W.2 has not deposed anything about the treatment given to the said Rm.Swaminathan subsequent to 09.08.2012. He would specifically state



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that they are not having any documents to show that treatment was given to the said Rm.Swaminathan subsequent to 09.08.2012. Admittedly, the respondents 1 to 3/claimants have not produced any iota of evidence to show that the said Rm.Swaminathan had been taking continuous treatment till his death.

16. It is not in dispute that after the death of the said Rm.Swaminathan, postmortem was not conducted on the body of the deceased.

17. The learned counsel appearing for the respondents 1 to 3/claimants would submit that merely because postmortem was not conducted, it cannot be said that the death was not due to the injuries sustained in the road accident and relied on the decision of this Court in ***The Manager, The New India Assurance Company Limited, Nagercoil, Kanyakumari District Vs. Bagavathi Amma and others (C.M.A.(MD)No. 1461 of 2013 dated 19.06.2018)***, wherein, a learned Judge of this Court, by relying upon the decision reported in ***2012 (7) MLJ 357 (New India Assurance Co. Ltd., Chennai Vs. R.Santhi and others)***, has held that



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since postmortem was not conducted, it cannot be said that the death was not due to the injuries sustained in the road accident.

18. In the case on hand, as already pointed out, the respondents 1 to 3/claimants have not produced any medical evidence to show that the said Rm. Swaminathan was taking treatment continuously and despite the treatment, he succumbed to the injuries.

19. It is pertinent to note that there is a time gap of 3 years from the date of accident and the date of death.

20. The Tribunal has come to a decision that the respondents 1 to 3/claimants have established that the deceased died due to the injuries sustained in the accident and the cause of death of deceased is due to septicaemia as a result of injury sustained by the deceased at the time of incident and the Tribunal has observed,

“Thus, from the above evidence of P.W.1 and P.W.2 and the exhibits marked through them in support of the claim of the respondents 1 to 3/claimants to establish the



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cause of death of deceased and the old age of the deceased, it could be easily presumed that the cause of death of deceased could be a septicaemia as a result of head injury. In addition to this, it is huge probabilities for the 78 years old deceased for prone to have easily infected with septicaemia due to the head injury and consequence of which, in my considered opinion, the death of deceased would have highly probable. Thus from the above evidence of P.W.1 and P.W.2, it is clear that there is every possibility of the deceased died due to septicaemia as a result of head injury. Further more, as already said, in my considered opinion, the head injury sustained by the 78 years old deceased was quite sufficient to cause death in the ordinary course of nature.”

21. Considering the evidence available on record, this Court is at loss to understand as to how the Tribunal has come to a decision that the deceased had developed septicaemia and that was the cause for the death of deceased Rm.Swaminathan. There is absolutely no evidence to show that the alleged head injury sustained by the said Rm.Swaminathan in the accident occurred on 16.07.2012 was not cured and the same was continuing till his death.



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22. As already pointed out, the respondents 1 to 3/claimants have produced the medical records relating to the treatment received by the deceased Rm.Swaminathan in the month of July 2012. As already pointed out, even P.W.2 has not given any specific opinion that the said Rm.Swaminathan had died due to the injuries sustained in the accident. In the absence of any medical evidence connecting the injuries to death, the Tribunal has grossly erred in arriving at the conclusion that the death was due to the injuries sustained in the accident. The Tribunal, in the absence of any iota of evidence, has given the impugned finding mechanically. No doubt, the proceedings for the motor accident claims before the Tribunal are summary in nature, but that does not mean that the Tribunal should scrutinize the evidence summarily or mechanically. Considering the above, this Court has no hesitation to hold that the finding of the Tribunal that the said Rm.Swaminathan had died due to the injuries sustained in the accident is liable to be set aside.

23. The Tribunal, taking note of the medical bills produced under Ex.P.11 and E.P.13, has granted Rs.54,300/- towards medical expenses. But as already pointed out, Ex.P.11 is in the form of certificate that the injured Rm.Swaminathan had undergone an operation and was charged



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Rs.40,000/- towards treatment. But the respondents 1 to 3/claimants have not produced any other bill or receipt issued by P.K.N. Medical Centre or any other documents to corroborate the certificate given under Ex.P.11. The Tribunal, in the absence of any acceptable documentary evidence and without considering the nature of document under Ex.P.11, has mechanically granted Rs.40,000/- towards medical expenses, but as per Ex.P.13-medicine bills, the respondents 1 to 3/claimants are entitled to get Rs.14,300/-. Moreover, this Court is inclined to award Rs.15,000/- for transportation, Rs.15,000/- for extra nourishment and Rs.10,000/- for attendant charges, all totalling Rs.54,300/- (Rupees Fifty Four Thousand and Three Hundred only).

24. 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 and the above points are answered accordingly.

25. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,54,300/- (Rupees Three Lakhs Fifty Four Thousand and Three Hundred only) is hereby



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reduced to **Rs.54,300/- (Rupees Fifty Four Thousand and Three Hundred 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 respondents 1 to 3/claimants are entitled to get **Rs.18,100/- (Rupees Eighteen Thousand and One Hundred only)** each. The appellant/insurer is directed to deposit the modified award amount with interest and costs to the credit of M.C.O.P.No.849 of 2017 on the file of the Motor Accident Claims Tribunal/IV Additional District Court, Madurai, 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 1 to 3/claimants 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/insurer. Parties are directed to bear their own costs.

08.09.2023

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

1. The Motor Accident Claims Tribunal/
IV Additional District Court, Madurai.
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.593 of 2019

Dated : 08.09.2023