



CMA(MD)No.152/2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.02.2023

Pronounced on : 20.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.152 of 2014

The Branch Manager,
The Oriental Insurance Company Ltd.,
Rajapalayam.

...Appellant / 2nd Respondent

Vs.

1.Francis (Died)

2.Dharmar

3.Ronicka Mary

4.Subbulakshmi

...Respondent Nos.1 to 4/
Petitioner Nos. 1 to 4

5.Kaniyappan

...5th Respondent/1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the award made in M.C.O.P.No.52 of 2010, dated 09.05.2013 on the file of the Motor Accidents Claims Tribunal Cum Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.



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For Appellant : Mr.C.Karthick
For R2 to R5 : No Appearance

JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.52 of 2010, dated 09.05.2013 on the file of the Motor Accidents Claims Tribunal Cum Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.

2.The appellant herein is the second respondent, the respondents 1 to 4 are the claimants and the 5th respondent herein is the first respondent in the claim petition.

3.Brief substance of the claim petition in M.C.O.P.No.52 of 2010 is as follows:

3.1.On 23.02.2009 when the petitioner was riding a two wheeler, bearing Registration No.TN-67-Z-6624 in a careful and cautious manner, a bus bearing Registration No.TN-67-K-5764 came in a rash and negligent manner dashed against the petitioner. The petitioner sustained injuries. He was admitted in Vathroyeruppu Government Hospital. After taking first aid,



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he was taken to Government Rajaji Hospital, Madurai and he took treatment as inpatient till 27.02.2009. Subsequently, he was admitted in Shanmuga Nursing Home, Madurai and took treatment as 'inpatient', later he took treatment in 'outpatient'. The eye of the petitioner was also affected. The petitioner was doing coconut shredding business and was earning Rs.6,000/- per month. The petitioner sustained permanent disability. The petitioner claim a sum of Rs.5,00,000/- as compensation.

3.2.During the trial, the petitioner- Francis died on 12.01.2012 and his LRs are impleaded as petitioners 2 to 4.

4.Brief substance of the counter filed by the second respondent is as follows:

The manner of accident was suppressed in the petition. It was the petitioner who was riding in a negligent manner and he drove the vehicle in an intoxicated mood and he dashed against the middle portion of the bus. The period of treatment and medical expenses all are denied.

5.Two (2) witnesses were examined and Fourteen (14) documents were marked as Ex.P1 to Ex.P14 on the side of the petitioners. No witness was examined and no document was marked on the side of the respondents. The



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Tribunal fixed a sum of Rs.5,20,398/- as compensation. After considering the restrictions in the claim petition, the Tribunal has awarded a sum of Rs.5,00,000/- as compensation.

6. Against the order, the appellant/second respondent has preferred this appeal on the following grounds:

No medical records was filed. In a injury case, the cause of action will not survive in respect of the legal representatives of the claimant. The personal suffering of the deceased could not be inherited by the legal representatives. There was no proof for income of Rs.6,000/- per month. The award is excessive.

7. On the side of the appellant, it is stated that the deceased died only on 29.12.2010. The accident happened in the year 2009 and that there was no nexus between the death and the accident. In Ex.P14 - Doctor Certificate, it is stated that the death was caused due to cardiac problem. The Doctor was not examined to prove the cause of death. No Doctor was examined to prove that the death was due to the side effects of the injuries caused due to the accident. No document was filed to prove that the deceased was under continuous



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treatment from the date of accident till the date of death. In Ex.P14, it was mentioned that the first claimant was having only one fracture and that the other injuries were simple in nature.

8. PW2 was examined as an eye witness. A copy of the FIR was marked as Ex.P1, copy of the Motor Vehicle Inspection Report was marked as Ex.P3, copy of charge sheet was marked as Ex.P4, copy of the judgment of the criminal Court was marked as Ex.P5. No rebuttal evidence was produced on the side of the respondents. The First Information Report, Charge Sheet were against the bus driver. The bus driver admitted his guilt and paid the fine in the Criminal Court. Considering Exs.P1, P2, P4 and P5 and considering the evidence of PW2, it is decided that the accident has happened due to the rash and negligent driver of the first respondent/driver.

9. A copy of the Accident Register was marked as Ex.P2, Scan Report was marked as Ex.P6, E.C.G. Report was marked as Ex.P8 and the Discharge Summary issued by the Madurai Shanmuga Nursing Home was marked as Ex.P12. In Ex.P2 & P12, all the injuries were mentioned as simple in nature except one fracture in the left leg.



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10. On the side of the appellant, it is stated that there was no nexus between the injury and cause of death. The Doctor was not examined to prove the cause of death. In Ex.P14, the cause of death was mentioned as anemic and cardiac problem. It is the duty of the appellant to prove the case.

11. A perusal of records reveals that the accident happened on 23.02.2009 and the death was on 23.09.2010. No document was filed on the side of the claimants to prove that the deceased was undergoing continuous treatment from the date of accident till the date of death. In Ex.P4 it was mentioned that the death was due to some cardiac problem. Ex.P2 reveals that there was only one fracture in the leg. The Doctor was not examined. Hence, it is decided that the claimants failed to prove that the deceased died due to the injuries sustained in the accident.

12. On the side of the appellant, it is stated that the Tribunal fixed the income of the deceased at Rs.5,000/- and after deducting 50% towards his own expenses and after adopting multiplier '13' the Tribunal has fixed the loss of income at Rs.3,90,000/- (Rs.2,500/- X 13 X 12).



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13. The medical bills were marked as Ex.P7. Considering Ex.P7, the Tribunal has awarded Rs.67,398/- as compensation towards medical expenses. Hence, it is decided that the claimants are entitled to Rs.67,398/- towards medical expenses and the same is rounded off to Rs.67,400/-, which is reasonable.

14. Considering the transport bill – Ex.P9, the Tribunal has awarded a sum of Rs.28,000/- towards transport expenses, which is reasonable.

15. Since there was no nexus between the accident and the cause of death, the claimants are not entitled for compensation for the death of the deceased. Considering the period of treatment and the period of rehabilitation of the deceased, it is decided the appellants are entitled to Rs.78,000/- (Rs. 6,500/- x 12) towards temporary loss of income. The claimants are entitled to Rs.20,000/- towards attender charges. The Tribunal has awarded Rs.5,000/- towards funeral expenses, and Rs.30,000/- towards loss of love and affection. Since the death is not due to the accident, it is decided that the claimants are not entitled for loss of love and affection and funeral expenses.



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16.Hence, the award is calculated as follows:-

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Temporary Loss of Income	- Rs. 78,000/-
Medical Expenses	- Rs. 67,400/-
Transport Expenses	- Rs. 28,000/-
Attender charges	- Rs. 20,000/-

Total	- Rs.1,93,400/-

The award is fixed as Rs.1,93,400/-.

17.In the result, this Civil Miscellaneous Appeal is **partly allowed**. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from **Rs.5,00,000/- to Rs.1,93,400/-** (Rupees One lakh Ninety Three Thousand Four Hundred only) which shall carry interest at the rate of 7.5% per annum.

(ii) The Appellant /Insurance Company, is directed to deposit the entire compensation of Rs.1,93,400/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs to the credit of M.C.O.P.No.52 of 2010 on the file of the Motor Accident Claim Tribunal cum Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur, within a period of eight weeks from



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the date of receipt of a copy of this order, less any amount already deposited.

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(iii) On such deposit being made by the appellant/Insurance Company, the respondents 2 to 4 / claimants are permitted to withdraw the award amount of Rs.1,93,400 /-, along with proportionate interest and cost in equal shares. No Costs. Excess amount if any deposited shall be refunded to the appellant.

20.04.2023

NCC Yes/ No

Index: Yes / No

Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal
Cum Chief Judicial Magistrate,
Virudhunagar District at Srivilliputhur.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.THARANI, J.

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Pre - Delivery Judgment made in
C.M.A(MD)No.152 of 2014

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