



C.M.A.(MD)No.1208 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.08.2023

Pronounced on : 31.10.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

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Ayyar Thevar (Died)

1. Jothiammal
2. Kodiveeran
3. Krishnamoorthy
4. Umamaheswari
5. Indira

... Appellants/
Petitioners

Vs.

1. Rajasekaran
2. The Oriental Insurance Company,
Represented through its Divisional Manager,
having office at :
No.1, 6A West Veli Street,
Bhanghur Dharmasala Building,
3rd Floor, Madurai – 1.

... Respondents/
Respondents

*(1st Respondent already exparte in MCOP No.335
of 2012. Hence, notice is not necessary)*



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Prayer : This Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, to enhance the award passed in the fair and decretal order dated 01.08.2016 made in M.C.O.P.No.335 of 2012 on the file of Motor Accident Claim Tribunal, Chief Judicial Magistrate Court, Madurai and allow this Civil Miscellaneous Appeal with interest and cost.

For Appellants : M/s.A.Liaketali

For R2 : Mr.C.Jawahar Ravindran

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.335 of 2012 dated 01.08.2016 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Madurai.

2. The appellants/claimants, who were awarded with compensation of Rs.1,41,500/- (Rupees One Lakh Forty One Thousand and Five Hundred only) with interest at 7.5% per annum payable by the second respondent/insurer for the death of Ayyar Thevar, consequent to an accident occurred on 27.10.2011, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.



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3. Originally, the deceased Ayyar Thevar has laid the claim petition claiming compensation for the disability allegedly suffered by him, consequent to an accident occurred on 27.10.2011 and pending claim petition, he died and subsequently, the wife, sons and daughters of the deceased Ayyar Thevar have got themselves impleaded as claimants 2 to 6 before the Tribunal and proceeded with the claim petition.

4. The appellants/claimants, by alleging that the said Ayyar Thevar had died due to the injuries sustained in the accident, claimed compensation for his death.

5. The second respondent/insurer has taken a defence that the said Ayyar Thevar after treatment has recovered from all the injuries sustained in the accident, that after the filing of the claim petition, he died on 20.04.2012 by natural way and that there was no connection between his death and the injuries sustained in the accident.

6. During trial, the appellants/claimants have examined the second appellant/third claimant Kodiveeran as P.W.1 and two staffs attached with



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the Madurai Meenakshi Mission Hospital as P.W.2 and P.W.3 and Dr. Shanmugam as P.W.4 and exhibited 22 documents as Ex.P.1 to Ex.P.22 and 4 witness documents as Ex.X.1 to Ex.X.4. The first respondent/first respondent had remained *ex-parte*. The second respondent/insurer has adduced neither oral nor documentary evidence.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, by holding that the appellants/claimants have failed to prove that the said Ayyar Thevar had died due to the injuries sustained in the accident, has granted compensation of Rs.1,41,500/- for the medical expenses incurred and towards extra nourishment, transportation and damages to the cloths and articles. Aggrieved by the impugned compensation, the claimants have preferred the present appeal.

8. The learned counsel appearing for the appellants/claimants would submit that the appellants/claimants have produced ample evidence to establish the fact that the death of the said Ayyar Thevar was due to the complication of the accidental injuries, that the Tribunal has failed to



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consider the medical records and the evidence of the Doctor in proper perspective, that the Tribunal has also failed to consider that the said Ayyar Thevar was admitted in Madurai Meenakshi Mission Hospital for the second time for post head injury also and that the Tribunal has also failed to appreciate the gravity of the head injuries and complications and also failed to take note of the period of treatment and the time gap between the last treatment and the date of death.

9. Admittedly, after the accident, the said Ayyar Thevar was admitted in Government Hospital on 27.10.2011 and according to the appellants/ claimants, since they were not satisfied with the treatment, the said Ayyar Thevar was shifted to Madurai Meenakshi Mission Hospital on 28.10.2011 and was discharged on 17.11.2011 and that subsequently, he was admitted in the same hospital on 28.01.2012 and was discharged on 13.02.2012.

10. It is evident from Ex.P.2-wound certificate that the said Ayyar Thevar had sustained the following injuries:- (1) sutured over left frontal region, (2) sutured over left parietal region 2 x 1 cm, (3) sutured wound



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over left eyebrow 1 x 1 cm, (4) left frontal lobe haemorrhagic condition, (5) bilateral occipital lobes haemorrhagic condition, (6) bilateral frontal parietal subdural hygroma, (7) left orbital medial wall fracture, (8) frontal bone fracture and (9) intra ventricular haemorrhage. They have classified three injuries as simple and other six injuries as grievous in nature.

11. As rightly pointed out by the learned counsel appearing for the second respondent/insurer, though the said Ayyar Thevar was diagnosed to have head injuries at the time of admission, subsequently after taking CT scan (brain), they have stated in Ex.P.6-Discharge Summary that “there was no evidence of any fresh bleed; resolving contusion seen in right occipital lobe; there was no shift of midline structures; brainstem and cerebellum are normal and white matter hypodensitis seen in both centrum semiovale region” and that after finding that the said Ayyar Thevar got improved, was discharged from the hospital. It is evident from Ex.P.15-Discharge Summary that the said Ayyar Thevar was subsequently admitted in Madurai Meenakshi Mission Hospital on 28.01.2012 with diagnosis as “alcohol withdrawal symptoms, systemic hypertension and post head injury” and after CT scan, they have not found any abnormalities and that the said Ayyar Thevar was under psychiatry service but due to sudden



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elevation of blood pressure with sudden breathlessness, he was transferred to medicine service and he was treated there and after his general condition got improved, he was discharged from the hospital. As rightly pointed out by the learned counsel appearing for the second respondent/insurer, though in Ex.P.15 they have mentioned post head injury along with two other reasons alcohol withdrawal symptoms and systemic hypertension, it is not their case that they have diagnosed any complication in the head injury already suffered and treated. More importantly, the appellants/claimants have not chosen to examine any medical officer, who had treated the said Ayyar Thevar in Madurai Meenakshi Mission Hospital, but on the other hand, they have chosen to examine P.W.4-retired medical officer, who has given evidence on the basis of the medical records available. P.W.4 in his cross-examination, would admit that the said Ayyar Thevar has not approached him for treatment after the accident or subsequently nor came for any medical advice, that the reason for death can only be ascertained from the postmortem certificate and that there was no mention that the said Ayyar Thevar died due to the accidental injuries in any of the medical records produced by the appellants/claimants.



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12. Admittedly, postmortem was not conducted on the body of the deceased Ayyar Thevar. No doubt, this Court in catena of decisions has settled the position that mere non-conducting of postmortem is not fatal to the case of the appellants/claimants. Even according to the appellants/claimants, the deceased was aged 56 years at the time of accident.

13. The learned counsel appearing for the appellants/claimants has relied on the following judgments:-

(i) 2015 (1) TN MAC 526

(Tamil Nadu State Transport Corporation Vs. C.Kasiraman and others)

“6. When there had been injury on account of the accident and the accident is admitted and when there is proof to show that till her death, she was in continuous treatment, the inference is that death is on account of the injuries sustained. There is no contra-evidence to show that the death was not on account of injuries sustained. Therefore, the Claims Tribunal is right in awarding Compensation under the head of Loss of Dependency and the Compensation awarded under the other heads.”

(ii) 2020 ACJ 587

(New India Assurance Co. Ltd. Vs. Meenakshi and others)

“8. From a perusal of the materials on record, it could be seen



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that after the accident on 13.03.2009, the deceased was taking continuous treatment for a period of 3 months. Originally, he was admitted in Sri Ramachandra Medical Centre on 13.03.2009 and from 13.03.2009, he took treatment as an inpatient till 24.03.2009 and thereafter, he was discharged. Again, he was re-admitted on 25.03.2009 and took treatment till 06.04.2009 and thereafter, on 26.04.2009, again he was admitted and was undergoing treatment till 02.06.2009, which shows that pursuant to the accident and only on account of the injuries sustained in the accident, he was taking continuous treatment. Though according to the learned counsel for the appellant, in the death report, marked as Ex-P6 & P8, under the cause of death, COPD and Pulmonary Tuberculosis have also been stated as reasons for death, we find that in the said report, with regard to cause of death, it is found mentioned “Polytrauma with Sepsis” which would go to show that the injuries sustained by him in the accident have also been the cause for his death. Though the deceased might have had other ailments, the evidence on record would clearly show that only right from the date of the accident, he was taking continuous treatment for a period of three months and thereafter only he died. Therefore, it cannot be conclusively said that death was due to other reasons and not owing to the injuries sustained by the victim in the accident. Therefore, we are unable to agree with the submission made by the learned counsel for the appellant and we are of the opinion that the



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Tribunal was right in fastening the liability on the appellant Insurance Company.”

14. In the above decisions, as rightly contended by the learned counsel appearing for the second respondent/insurer, it has been stated there existed connection or link between the death and the accidental injuries. In the case on hand, as already pointed out, the said Ayyar Thevar was admitted for the second time in the hospital not for the treatment for the injuries suffered in the accident, but for some other issues nor he was treated therefor. Considering the entire evidence available on record, the finding of the Tribunal that the appellants/claimants have miserably failed to prove the link between the death and the accidental injuries, cannot be found fault with.

15. 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



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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:-

“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



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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.

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.



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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 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



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obliged to make good the loss sustained by the injured. Legal heirs and legal representatives 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



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Karim Musa (supra) and in the case of Amrishkumar Vinodbhai (supra); and aforesaid 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



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appeal for enhancement would be confine to the claim for the loss to the estate as observed hereinabove.”

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



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estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal.

.....

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....”

16. Applying the above dictum laid down by the Hon'ble Supreme Court, the appellants/claimants are not entitled to get any amount towards pain and suffering and future medical expenses. The Tribunal has awarded



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Rs.5,000/- for extra nourishment, Rs.2,000/- for transportation and Rs.500/- towards damages to cloths and articles and also granted Rs.1,34,000/- towards medical expenses incurred under Ex.P.7, Ex.P.8 and Ex.P.11. As rightly contended by the learned counsel appearing for the second respondent/insurer, the Tribunal has rightly disallowed the medical expenses for the treatment taken in Madurai Meenakshi Mission Hospital for the second time as he was not treated for the accidental injuries at that time. Considering the nature of the injuries suffered, period of inpatient treatment and other attending circumstances, the amount awarded by the Tribunal for the above heads are definitely on lower side. Hence, this Court is inclined to grant Rs.50,000/- for extra nourishment, Rs.20,000/- for transportation and Rs.5,000/- for damages to cloths and articles.

17. Admittedly, the appellants/claimants have not chosen to prove that the said Ayyar Thevar had sustained any permanent disability and consequent functional disability and as already pointed out, after the filing of the claim petition, he was reported dead. Hence, the appellants/claimants are not entitled to get compensation under any other heads. Accordingly, the appellants/claimants are entitled to get total



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compensation of Rs.2,09,000/- and the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Medical Expenses	1,34,000	1,34,000	Confirmed
2.	Extra nourishment	5,000	50,000	Enhanced
3.	Transportation	2,000	20,000	Enhanced
4.	Damages to cloths and articles	500	5,000	Enhanced
	Total	1,41,500	2,09,000	Enhanced by Rs.67,500/-

18. The Tribunal, taking note of the fact that though the claimant Ayyar Thevar died on 20.04.2012, his legal representatives got themselves impleaded on 25.08.2014, has come to a decision that the appellants/claimants are not entitled to get interest for the said period. But as rightly contended by the learned counsel appearing for the appellants/claimants, the Tribunal has adopted a hypertechnical view and as such, the reason assigned for not granting interest for the period between 20.04.2012 and 25.08.2014 is not convincing. Hence, this Court is of the view that the



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appellants/claimants are entitled to get interest at 7.5% per annum for the above said period also.

19. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,41,500/- (Rupees One Lakh Forty One Thousand and Five Hundred only) is hereby enhanced to **Rs.2,09,000/- (Rupees Two Lakhs and Nine Thousand only)** together with interest at 7.5% per annum. The second respondent/insurer is directed to deposit the modified enhanced amount with interest and costs to the credit of M.C.O.P.No.335 of 2012 from the date of claim petition till the date of deposit on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate 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 and on such deposit, the first appellant is entitled to get **Rs.1,09,000/- (Rupees One Lakh and Nine Thousand only)** and the appellants 2 to 5 are entitled to get **Rs.25,000/- (Rupees Twenty Five Thousand only)** each. Accordingly, the appellants are permitted to withdraw their shares along with accrued interest and costs, less amount already withdrawn, if any, on due application before the



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Tribunal. Parties are directed to bear their own costs. The appellants are **directed to pay the court fee** for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

31.10.2023

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

To:

1. The Motor Accident Claims Tribunal/
Chief Judicial Magistrate 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.1208 of 2016

Dated : 31.10.2023