BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 31.03.2023

PRONOUNCED ON : 01.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.380 of 2018

The Manager
ICICI General Insurance Company Ltd.,
ICICI Lombard House
No.414, Veersavarkkar Marg
Sidhi Vinaya Kovil
Prabadevi
Mumbai 400 025 ... Appellant / 2nd Respondent

vs.

1.S.Ganesan (died)

2.Saraswathi

3.Kumaravel

4.Rajarajeswari ... 1 to 4 Respondents / Petitioners

5.K.S.Rajeswaran ... 5th Respondent / 1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1980, to set aside the judgment and decree dated 15.02.2018 in MCOP.No.61 of 2014 on the file of the Motor Accident Claims Tribunal Cum Principal Sub Judge, Karur and allow the above Civil Miscellaneous Appeal.

For Appellant	:	Mr.V.Muthukamatchi
R1	:	died
For R2 to R4	:	Mr.K.Sureshkumar
For R5	:	No appearance

JUDGMENT

The present appeal has been filed by the Insurance Company challenging the award of the Motor Accident Claims Tribunal, Karur in MCOP.No.61 of 2014 primarily on the ground that there is no nexus between the death and the injuries sustained in the accident.

2.One Ganesan had filed MCOP.No.61 of of 2014 on the file of the Motor Accident Claims Tribunal, Karur contending that while he was driving a two wheeler at 08.00 a.m on 26.01.2014, a Car coming from behind, driven in a rash and negligent manner, dashed on the rear side of the two wheeler. In the said accident, he had sustained head injury, grevious fracture in right leg, right hip, right shoulder, right face and injuries all over the body.

3.According to the claimant, he was in agricultural cum financial transaction business and earning a sum of Rs.1,00,000/- per month and he was aged about 70 years at the time of the accident. The claimant had further made a claim of Rs.15,00,000/- towards compensation.

4. A counter was filed by the insurance company of the Car contending that the Car driver did not have a valid driving license and the claimant also did not have a valid license. The insurance company had contended that there was a contributory negligence on the part of the claimant. The insurance company had also disputed the occupation, monthly income and the quantum of compensation as prayed for by the claimant.

5.The claimant had died on 02.08.2015 pending Motor Accident Claim Petition. The legal heirs were impleaded in the place of the injured claimant. The legal heirs amended the claim petition to the effect that only due to the accident that had taken place on 26.01.2014, the death had happened on 02.08.2015. The claimants prayed for a sum of Rs.50,00,000/- towards compensation. After amendment of the claim petition, no additional counter was filed by the insurance company.

6.The Tribunal after considering the oral and documentary evidence, arrived at a finding that since no counter has been filed on the side of the insurance company, questioning the averments that the injured claimant had died only due to the accident, the fact that the death had occurred only due to the accident stands proved.

7.The Tribunal relied upon Exhibits P6, P7 and P10 medical bills to arrive at a finding that the injured claimant had died only due to the accident and not due to ill-health. The Tribunal further found that the accident had happened only due to the rash and negligent driving on the part of of the driver of the Car based upon evidence of PW1 (injured claimant), Exhibit P1-F.I.R and Exhibit P3-motor vehicle inspection report. The Tribunal had proceeded to further find that the injured claimant had sustained 30% disability and proceeded to award a sum of Rs.75,000/- for the same. The Tribunal awarded a sum of Rs.6,08,888/- towards medical expenses based upon Exhibit P6. Another sum of Rs.1,19,380/- was awarded towards medical bills based upon Exhibit

P10. Considering the fact that the petitioner was earning of Rs.10,000/-, a sum of Rs.4,50,000/- was awarded towards loss of income,. The Tribunal had awarded Rs.1,00,000/- as loss of consortium to the wife and Rs.50,000/- each towards loss of love and affection to two children. The Tribunal has awarded Rs.10,000/- towards funeral expenses, Rs.5,000/- towards transport expenses and Rs.3,500/- towards extra nourishment. In total, a sum of Rs.14,71,768/- has been awarded towards death to the said Ganesan. The said award is under challenge in the present appeal.

8.The learned counsel for the appellant/Insurance Company had contended that the accident has taken place on 26.01.2014 and the death has occurred after 1 year and 7 months on 02.08.2015. There is no nexus whatsoever between the injuries sustained in the accident and the death of the said Ganesan. If really, the death is related to the accident, postmortem should have been conducted to find out the real reason for the death. However, in the present case, no postmortem was conducted.

9.The learned counsel for the appellant had further contended that the deceased had sustained grievous injuries in the head, right leg, right shoulder, right hand only, but the death has taken place on 02.08.2015 due to kidney failure. Therefore, it is a clear case of death has happened due to Chronic Kidney Disease and the accident has nothing to do with the death of the deceased person. He had further contended that the entire medical expenses meted out by the deceased person were only towards kidney disease and not towards any medical expenses arising out of the injuries sustained in the accident.

10.The learned counsel had further contended that once an injured claimant had died pending claim petition, the legal heirs can only claim the medical expenses and other expenses that were actually spent by the deceased or his dependents. However, the Tribunal has awarded a sum of Rs.4,50,000/- towards loss of income and Rs.2,00,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses which is not admissible in law. The learned counsel had further contended that if the Court has arrived at a finding that the death has got any nexus with the accident, the Tribunal ought not to have awarded a sum of Rs.75,000/- towards 30% disability and then proceeded to award another sum of Rs.4,50,000/- towards loss of income. He had further contended that the deceased was hale and healthy and he was cross examined on 05.03.2015. The disability certificate marked as Exhibit P8 only reveals that he had sustained 45% disability in the right leg and right hand and therefore, the death is not attributable to the accident.

11.The learned counsel for the appellant had further contended that excess amount has been awarded under the head of loss of consortium to the wife and loss of love and affection towards the children. He had further contended that the death of the said

Ganesan is clearly not attributable or relatable to the accident that took place on 26.01.2014. Therefore, the claimants are not entitled to receive any compensation other than actual amount spent by the deceased or his relatives towards medical expenses, transport expenses, extra nourishment and the attender charges. Hence, he prayed for allowing the appeal.

12.Per contra, the learned counsel appearing for the respondents had contended that the injured claimant was continuing his treatment from January 2014 till he passed away in August 2015. In fact, the deceased person had died only due to the injuries sustained by him in the accident. Therefore, there is a nexus between the death and the accident that happened on 26.01.2014. When the death is relatable to the accident and the injuries sustained therein, the legal heirs of the deceased claimant are always entitled to seek for compensation under the head of loss of income, loss of consortium and loss of love and affection.

13. The learned counsel had further contended that Exhibits P6 and P10 medical bills will clearly disclose that the deceased was taking treatment only to cure the injuries sustained by him in the accident. Exhibit P7-discharge summary would also disclose the same. He had further contended that the deceased was admitted to the same hospital in three phases. Originally, he was admitted on 28.01.2014 to 06.03.2014 before the Kovai Medical Centre and Hospital. Again he was admitted to the same hospital between 11.02.2015 to 13.02.2015. For the third time again he was admitted to the same hospital between 21.07.2015 and 01.08.2015. The admission of the deceased person regularly would clearly disclose that he was taking treatment only to cure the injuries sustained by him in the accident. The deceased was under continuous treatment for the injuries sustained by him. Therefore, the death is not only related to the accident, but it is the result of the accident.

14.The learned counsel for the respondents had further contended that the Tribunal was right in awarding under the head of loss of income and under the head of loss of consortium and loss of love and affection. Hence, he prayed for sustaining the award passed by the Tribunal.

15.I have considered the submissions made on either side and perused the materials available on record.

16.One Ganesan had sustained injuries in an accident that took place on 26.01.2014. According to him, he was driving a two wheeler and a Car belonging to the first respondent came from behind dashed against the rear side of the motor bike which resulted in the accident. A perusal of Exhibit-P3 which is the motor vehicle inspector's report of the car indicates that the front side of the Car has been damaged. The claimant who was examined as PW1 has categorically deposed that the Car c om behind the two wheeler and had dashed against the rear side of the bike. The said manner of accident is not specifically disputed in the counter filed by the insurance company. They have only contended that there was contributory negligence on the part o the claimant.

17.A perusal of counter filed by the owner of the Car also reveals that there is only a vague denial with regard to the manner of accident. Therefore, this Court is of the opinion that the accident has happened only due to the rash and negligent driving on the part of the driver of the Car. The said findings arrived at by the Tribunal does not require any reconsideration.

18.Exhibit P8 is the disability certificate issued by the Government Hopsital, Pallapatti, Karur. As per the said certificate, the said Ganesan had sustained fracture in the right thumb, fracture in the right scapula. The discharge summary issued by the hospital under Exhibit P7 also reveals only these injuries. The disability certificate discloses that he had sustained disability to an extent of 45% only. This accident has taken place on 26.01.2014 and the said injured claimant had passed away on 02.08.2015. The claimants had contended that the death has occurred only due to the injuries sustained in the accident which is disputed by the insurance company.

19.A perusal of the disability certificate under Exhibit P8 and the discharge summary under Exhibit P6 would clearly establish the fact that the injuries were only in the right leg and thumb. Further, the injured himself had deposed before the Court and he was subjected to cross examination on 05.03.2015. He had passed away only on 02.08.2015 ie. three months after the cross examination.

20.Though it is contended by the claimants that the deceased had died due to the injuries sustained by him in the accident, no postmortem has been conducted to find out the real reason or cause for the death of the said Ganesan. The claimants have chosen to produce the discharge summery for the period covering from 28.01.2014 to 06.03.2014 and 11.02.2015 to 13.02.2015. However, for reasons best known, the claimants have not produced the discharge summery for the period covering from 21.07.2015 to 01.08.2015. If the discharge summery for the third phase of admission had been filed, it would have revealed the cause of death of the deceased person. Only the bills relating to the third phase have been produced. In view of non conducting of postmortem and non production of the discharge summery for third phase of admission, this Court is not in a position to accept the contention of the claimants that the deceased had died only due to the injury sustained by him in the accident.

21.There is one more reason to arrive at such a conclusion. Exhibit P7 which is the discharge summery relating to first phase of admission clearly discloses that the deceased was suffering

Chronic Kidney patient. On 28.01.2014 within two days of the date of the accident when he was admitted to Kovai Medical Hospital at Coimbatore. The deceased was diagnosed as Chronic Kidney Disease. The said discharge summary also points out that during the past history, he had underwent renal dialysis. At the time of discharge, he had been advised to take renal dialysis twice a week.

22.A perusal of the second phase of discharge summary would indicate that the final diagnosis is “end stage renal disease initiated on hemo-dialysis”. The said discharge summery also points out that the deceased is a known case of Chronic Kidney Disease from the year 2011 onwards. The entire medical advised and follow up prescribed in the discharge summery relates only to kidney disease and nothing to do with the injuries sustained in the accident. It is not the case of the claimant that his kidney was damaged in the accident. Therefore, it is clear that the deceased was a Chronic Kidney patient from the year 2011 onwards and he had died due to Chronic Kidney Disease at the age of 70 years.

23.Though the claimants had contended that the deceased was taking continuous treatment for the injuries sustained by him in the accident, all the medical records indicate that only for a few days, he was taking treatment for the injuries and rest of the bills disclose that he was taking treatment for his kidney disease and undergoing dialysis. Therefore, it is clear that the medical bills produced under Exhibit P6 do not wholly relate to the injuries. In fact, Exhibit P10 completely relates to the treatment of kidney disease.

24.The claimants had contended that when the claim petition was amended after the death of the injured claimant, the insurance company has not filed any additional counter disputing the nexus between the accident and the death. In fact, precisely for the said reasons, the Tribunal had refused to accept the said contentions of the insurance company during the argument stage. Hence, the learned counsel for the claimants had contended that due to non filing of the additional counter, by the insurance company, when there is no contra pleadings, the contention of the claimants that the death is attributable to the accident should be accepted. However, this Court is not inclined to accept the said contention. It is true that the insurance company ought to have filed an additional counter after the amendment of the claim petition. When the claimants contended that death is relatable to the accident, it is for the claimants to establish the same especially when the death has occurred 1 year and 7 months after the accident. The medical records namely Exhibits P6, P7 and P10 clearly speak about the fact that the deceased was a Chronic Kidney patient from the year 2011 onwards. The injured claimant was admitted to the hospital on 28.01.2014 that is 2 days after the accident. It clearly points out that the deceased is the

Chronic Disease patient and he is having past history of c Kidney disease. When Exhibit P7 clearly reveals that 2 days after the accident, the patient is having a chronic kidney disease, this Court cannot brush aside the said document and place the burden upon the insurance company to disprove the case of the claimants. In fact, the claimants are having the medical records in their possession and it is for them to place it before the Court to establish the nexus between the injuries sustained in the accident and the death of the claimant. However, this Court is of the view that the claimants have miserably failed to establish the connection between the accident and the death. Therefore, this Court is of the view that the death of the injured claimant has not occurred due to the injuries sustained by him in the accident, but only due to the Chronic Kidney disease which he was suffering from the year 2011 onwards.

25.A perusal of Exhibits P6 and P10 medical bills relate to the medical procedure, medicines and the treatment given to the deceased for his kidney disease. Therefore, the Tribunal was not right in awarding the entire bills as per Exhibits P6 and P10. Therefore, this Court is of the view that instead of Rs.7,28,268/- (Exhibits P6 and P10), this Court is inclined to award only a sum of Rs.3,50,000/- towards medical expenses. The Tribunal was not right in awarding Rs.75,000/- towards 30% of disability when the injured claimant had already passed away. When the death is not attributable to the accident, the Tribunal was not right in awarding a sum of Rs.4,50,000/- towards loss of income and Rs.2,00,000/- towards loss of consortium and loss of love and affection to the claimants. The Tribunal was not right in awarding a sum of Rs.10,000/- towards funeral expenses.

26.In view of the above said deliberations, this Court is inclined to fix the award amount is as follows:

Medical Expenses	Rs.3,50,000.00
Transport Charges	Rs. 10,000.00
Extra Nourishment	Rs. 15,000.00
Attender Charges	Rs. 10,000.00
	Rs. 3,85,000.00

27.The award of the Tribunal is hereby modified and reduced to Rs.3,85,000/-. The appellant Insurance Company is directed to deposit the modified compensation of Rs.3,85,000/- with 7.5% interest per annum from the date of claim petition till the date of deposit to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. Out of the said amount, the second claimant is permitted to withdraw Rs.2,00,000/- and the third and fourth claimants are permitted to withdraw Rs.92,500/- each with interest by filing a formal permission petition before the Tribunal. If any excess amount that was deposited by the appellant/insurance company, shall be refunded along with accrued interest.

28. The Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

Sd/-

Assistant Registrar(CS I)

// True Copy //

/07/2023

Sub Assistant Registrar(CS)

msa

To

1.The Principal Sub Judge,
Motor Accident Claims Tribunal
Karur

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

+1 CC to M/s.V.MUTHUKAMATCHI, Advocate (SR-25976[F] dated 05/06/2023)

C.M.A(MD)No.380 of 2018
01.06.2023

MK/08.07.2023 8P 5C