



C.M.A.No.682 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 18.07.2023

Judgment Delivered On : **15.02.2024**

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.682 of 2018

1.M.Arumugam
2.M.Kamala @ Velankanni
3.A.Santhi
4.A.Mohana Sundhari ... Appellants

Versus

1.N.Thirunanasambadamoorthy
2.The New India Assurance Company Limited,
M.T.P.C.No.45, Moore Street,
Chennai – 1. ...Respondents
(R1 remained *ex-parte* before Tribunal)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P.No.4621 of 2010 on the file of Motor Accident Claims Tribunal, (IV Small Causes Court), Chennai.

For Appellants : Mr. K. Varadha Kamaraj

For Respondents : Mr. K. Vinod (for R2)

: R1- Set *ex-parte* before the Tribunal



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JUDGMENT

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This Civil Miscellaneous Appeal is filed for enhancement of compensation passed in Award dated 12.07.2013 made in M.C.O.P.No.4621 of 2010 on the file of Motor Accident Claims Tribunal, (IV Small Causes Court), Chennai.

2. According to the appellants/claimants, the deceased by name, Mrs.M.Mottaiammal @ Murugammal, while crossing the GST Road at Mamandur Bus stop on 04.09.2010 at about 10 A.M., a Lorry bearing Registration No.MSQ-6438, which was driven by its driver in a rash and negligent manner from Chengalpattu to Madhuranthagam direction, had hit the deceased. Due to that impact, she sustained multiple injuries and she died on 09.09.2010 at Government General Hospital only due to the injuries sustained in the said accident. Hence, the above claim petition.

3. The first appellant is the son of the deceased, the second appellant is the daughter of the deceased, the third appellant is the daughter-in-law of the deceased and the fourth appellant is the grand-daughter of the deceased. Since the first respondent is the owner of the vehicle and the



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second respondent is the insurer of the first respondent's vehicle and the deceased died due to the accidental injuries caused by the first respondent's vehicle, both the respondents are responsible for the accident and being the legal heirs of the deceased, the appellants/claimants are claiming a sum of Rs.6,00,000/- as compensation in the said claim petition.

4. The case of the respondents is that the accident had not occurred due to rash and negligent driving of the driver of the lorry of the first respondent, which was insured with the second respondent. The appellants/claimants have not proved that the deceased succumbed to the accidental injuries and also, there is no nexus between the accidental injuries and the cause of death of the deceased. The appellants/claimants have not produced any proper documents to show that the deceased was subjected to the autopsy. Therefore, the cause of death was not clearly established by the appellants/claimants. Hence, the claim petition itself is liable to be dismissed.

5. The learned counsel for the appellants/claimants submitted that due to rash and negligent driving of the driver of the first respondent's



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vehicle alone, the deceased succumbed to the injuries. The deceased was admitted in the Government General Hospital Chennai, on 04.09.2010, and she was discharged on 07.09.2010, but the hospital officials hence mistakenly noted that she was discharged only on 09.09.2010. In order to prove the same, the said officials in the hospital was summoned by P.W.1, who has clearly deposed that the date of admission is 04.09.2010 and the date of discharge is on 07.09.2010, whereas, in the discharge summary, the date of discharge was wrongly mentioned as 09.09.2010. Therefore, the deceased was stated to have died on 09.09.2010. At the time of accident, the age of the deceased was 60 years and she succumbed to the injuries and she died only due to the accidental injuries. Though the Tribunal accepted the factum of accident and the manner of the accident, however, the Tribunal has erroneously held that there is no nexus between the accidental injuries and cause of the death of the deceased, and hence, the Tribunal has only awarded the compensation as if she succumbed only to the injuries sustained by her. Therefore, the Award passed by the Tribunal may be enhanced from Rs.20,000/- to Rs.6,00,000/- lakhs as claimed by the appellants/claimants in the claim petition and upon considering these facts, the appeal may be allowed.



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6. The learned counsel appearing for the second respondent/Insurance Company submitted that the compensation claimed by the appellants/claimants is very high. The appellants are not entitled to the relief sought for in this appeal, though the appellants submitted that the date of accident is 04.09.2010, the deceased was taken to the Medical College Hospital at Chengalpattu District for the first aid and thereafter, it is stated that she was admitted to the Government General Hospital in Chennai for further treatment, and discharged on 07.09.2010 and she died on 09.09.2010. But, from the evidence of the first appellant, who was examined as P.W.1, it is clear that on the date of alleged accident i.e., on 04.09.2010, the deceased took treatment at the Chengalpattu Medical College Hospital as an in-patient from 04.09.2010 to 09.09.2010 and she died on 09.09.2010 in the same hospital. Moreover in the discharge summary/Ex.P2, alleged to have been issued by the Chengalpattu Medical College, the date of discharge had been corrected as 09.09.2010 and the date of issuance of the discharge summary is mentioned as 07.09.2010, which is contrary to the averments made in the claim petition. Therefore, there are glaring discrepancies in Ex.P2 document and that it was tampered with, and it is a concocted one and it was presented before the Court only for the



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purpose of getting compensation. Therefore, the impugned Award passed by the Tribunal is liable to be set aside.

7. The learned counsel for the second respondent further submitted that the respondents have taken steps to get the relevant documents to prove the forgery of the appellants/claimants, and they approached the Government General Hospital, Chennai for producing the medical records of the deceased, by name, Mottaiammal @ Murugammal. In response to the same, the Government General Hospital, Chennai sent a letter to the Tribunal below on 01.08.2012, which was marked as Ex.C1, wherein, it is stated that the deceased was found to be admitted in the hospital as in-patient in I.P.No.71424 on 04.09.2010 and discharged on 07.09.2010, which is against the medical advice, as per the records produced by the appellants/claimants.

8. From the foregoing reasons, it comes to light that the respondents question that there was any accident at all that had occurred as on the alleged date of “04.09.2010” with the insured vehicle, which was alleged to have been involved in the said accident. As alleged, whether the



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deceased sustained any grievous injuries owing to the said accident or not and no one can take treatment at two different hospitals at the same time, and since the discharge summary marked as Ex.P2, is alleged to have been issued from the Chengalpattu Medical College, it is a manipulated document by the appellants/claimants, who have made it believe that the deceased died due to the accidental injuries which was alleged to have been suffered by her at the time of accident on 04.09.2010. There was no post-mortem conducted with regard to the cause of death and in the burial ground record of the death/Ex.P4, it is stated that the deceased died in the house and not in the hospital as alleged by the appellants/claimants. Therefore, the appellants/claimants have not proved the place of death and also not even proved properly the place of taking the treatment and without conducting post-mortem, it cannot be decided that the deceased died due to the accidental injuries. Though the Tribunal has rightly accepted the contention of the respondents and disbelieved the case of the appellants and only awarded a sum of Rs.20,000/- as compensation for the injuries sustained by her, since there is no medical evidence to prove that the deceased died due to the accidental injuries and the Doctor, who had given the treatment to the deceased, was also not examined. Therefore, under such circumstances,



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there is no merit in the appeal and it is liable to be dismissed.

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9. Admittedly, a case was registered against the driver of the first respondent in Crime No.450 of 2020, dated 05.09.2010, for the offences under Sections 279, and 237 of IPC., and the deceased was admitted in the Government Hospital, Chengalpattu and she was taking treatment from 04.09.2010 to 07.09.2010 and she was discharged on 07.09.2010. Thereafter, she died on 09.09.2010. The respondents have not challenged the finding of the Tribunal regarding the manner of the accident and injuries. But, however, the respondents denied that the cause of death was due to the accidental injuries and also the discharge summary. Since the appellants have stated initially that they have admitted the deceased in the Government Hospital, Chengalpattu and later on, they admitted her in the Government General Hospital, Chennai, whereas, the discharge summary and seal show otherwise.

10. Admittedly, though the deceased was admitted in the hospital on 04.09.2010 and was discharged on 07.09.2010, from the oral and documentary evidence, it is clear that she died only on 09.09.2010 and on



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the said date, she was not in the hospital, and she was in the residence and she died only in the residence. The death certificate and the receipt of the burial ground also show that she died in the residence at Chennai, whereas, Ex.P2/discharge summary shows otherwise. However, the fact remains that the deceased was admitted in the hospital from 04.09.2010 to 07.09.2010 and she died only in the residence at Chennai and not in the hospital. Admittedly, post-mortem was not conducted to prove the cause of the death and it was not recorded, and even the Doctor who gave the treatment was also not examined and nowhere it is stated that the deceased died only due to the injuries sustained during the said accident. Even there are no entries in the accident register in respect of the nature of injuries sustained by her and the discharge summary is also a suspected one, and as to whether the accident actually occurred and as to whether she was admitted and had taken the treatment and when she was actually discharged from the hospital, and the time of discharging, the condition of the deceased was stable or not, etc., nothing was clearly narrated by the appellants/claimants. Even though the Tribunal arrived at a conclusion that in the absence of post-mortem and in the absence of any concrete medical evidence that the deceased died due to accidental injuries, awarded a sum of Rs.20,000/- as compensation.



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11. Even in the absence of post-mortem report, if any other materials are available, this Court can consider the same, but, whereas in this case, there is no concrete evidence to show that the deceased died due to the accidental injuries. Therefore, under such circumstances, it seems that the deceased was only admitted in the hospital 3 days and later she died only in the residence. Therefore, she sustained only due to the head injuries, which is a fatal, and she could not have been discharged on 07.09.2010 itself. Hence, she was admitted in the hospital on 04.09.2010 and she was discharged on 07.09.2010. and the appellants have also not examined the medical officer/Doctor who gave the treatment to the deceased and under what circumstances, she was discharged from the hospital.

12. As already stated, that there is a suspicion in the discharge summary and in the absence of any concrete proof to show that the deceased died due to the accidental injuries, the Tribunal awarded a sum of Rs.20,000/- as compensation. This Court being an appellate Court and fact finding Court, does not find any perversity in the findings of the Tribunal. Considering the overall facts, the appellants/claimants have not approached this Court with clean hands and there is no reason to interfere with the



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impugned Award of the Tribunal. Accordingly, the Civil Miscellaneous Appeal is liable to be dismissed.

13. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the impugned Award dated 12.07.2013 passed in M.C.O.P.No.4621 of 2010 of the Motor Accident Claims Tribunal (IV Small Causes Court), Chennai. No costs.

15.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Case Citation : Yes/No

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To

- 1.The Motor Accident Claims Tribunal,
(IV Small Causes Court), Chennai.
- 2.The Section Officer,
V.R. Section, High Court of Madras.



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P.VELMURUGAN, J.

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Pre-Delivery Judgment in

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