# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM:

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

**C.M.A. No.143 of 2020 and C.M.P. No.1015 of 2020**

The Branch Manager,
The Oriental Insurance Co. Ltd.,
Siddaveerappa Chetty Street,
Dharmapuri. .. Appellant

vs.

1.Gopalappa (died)

2.Kajsgnanna

3.Renuka

4.Ganesha

5.Babu

6.Lakshmiyamma

7.N.Parthiban .. Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 22.01.2019 made in M.C.O.P. No.42 of 2016 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Hosur.

For Appellant : Mr.J.Chandran

For Respondents : R1-died
Mr.M.Sivakumar for R2 - R6
R7-Notice sent service awaited

**JUDGMENT**

This appeal has been filed by the appellant/Insurance Company, challenging the award, questioning its liability to pay compensation on the ground that the deceased did not die as a result of an accident caused by a vehicle, insured with the appellant/Insurance Company.

2.The respondents 2 to 6/claimants are the legal representatives of the deceased Gopalappa. Originally, Gopalappa made a claim before the Motor Accidents Claims Tribunal seeking compensation for the injuries sustained by him as a result of the accident caused by the vehicle, insured with the appellant/Insurance Company. During the pendency of the Claim Petition in M.C.O.P. No.42 of 2016, Gopalappa died. According to the legal representatives of the deceased Gopalappa, the cause of death of Gopalappa is due to the injuries sustained by him as a result of the accident caused by the vehicle, insured with the appellant/ Insurance Company.

3.The Tribunal, under the impugned award, held the driver of the vehicle, insured with the appellant/Insurance Company, to be responsible for the accident and directed the appellant/Insurance Company to pay the claimants a total compensation of Rs.15,39,615/- as detailed hereunder:

| Sl.Nos. | Heads | Amount |
|---|---|---|
| 1. | Loss of dependency | Rs.10,53,000/- |
| 2. | Loss of love and affection | Rs. 40,000/- |
| 3. | Transportation | Rs. 10,000/- |
| 4. | Funeral expenses | Rs. 15,000/- |
| 5. | Loss of estate | Rs. 15,000/- |
| 6. | Future prospects | Rs.2,63,250/- |
| 7. | Medical bills | Rs.1,03,365/- |
| 8. | Loss of consortium | Rs. 40,000/- |
| | Total | Rs.15,39,615/- |

4.The following are the un-disputed facts:

a)The accident happened on 16.06.2014;

b)Gopalappa sustained injuries as a result of the accident caused by the vehicle, insured with the appellant/Insurance Company. He sustained left side rib fracture;

c)Gopalappa was hospitalised for a period of 8 days between 18.06.2014 and 25.06.2014;

d)The Claim Petition was filed before the Tribunal by Gopalappa on 05.06.2015. Gopalappa died during the pendency of the Claim Petition on 25.07.2017 after a lapse of more than three years from the date of the accident;

e)The claim was not amended on account of the death of Gopalappa;

5.The contention of the learned counsel for the appellant/Insurance Company is that the claimants did not produce any medical records of Gopalappa before the Tribunal to prove that he was undergoing treatment even after he was discharged from the hospital at the first instance on 25.06.2014. Learned counsel for the appellant/Insurance Company would contend that only for a period of 8 days, Gopalappa was hospitalised and therefore, the claim having been filed after a lapse of more than a year from the date of the accident and the date of death being 25.06.2017 i.e. after a lapse of three years from the date of the accident, the cause of death of Gopalappa is not due to the injuries sustained by him as a result of the accident caused by the vehicle, insured with the appellant/Insurance Company. According to him, the Tribunal has erroneously without any evidence has held the appellant/ Insurance Company liable to pay compensation. He would also rely upon the maxim 'ACTIO PERSONALIS - MORITOR CUM PERSONA' for the proposition that once the accident victim dies, his legal representatives are not entitled for compensation as prayed for in the Claim Petition.

6.On the contrary, the learned counsel for the claimants would contend that the Tribunal has rightly held the appellant/Insurance Company liable to pay the determined compensation, after analysing the evidence available on record. He would submit that the deceased Gopalappa had sustained grievous injuries and has suffered rib fracture, which has resulted in his death, after filing of the Claim Petition before the Tribunal.

7.Admittedly, there are no medical records produced by the claimants before the Tribunal in respect of the medical treatment underwent by the deceased Gopalappa. Further, he was initially discharged from the hospital on 25.06.2014. As seen from the available evidence placed before the Tribunal, Gopalappa was hospitalised only for a period of 8 days from 18.06.2014 to 25.06.2014 on account of the accident caused by the vehicle, insured with the appellant/Insurance Company.

8.Though the learned counsel for the claimants would contend that only due to the grievous injuries sustained by Gopalappa on account of the accident he died, there is no evidence placed on record by the claimants before the Tribunal.

9.This Court has perused and examined the impugned award. The Tribunal, while awarding compensation for the death of the deceased Gopalappa, has failed to give reasons as to how the claimants are entitled to claim compensation for the death of Gopalappa as the evidence available on record is not sufficient to prove that Gopalappa had died only as a result of the injuries sustained by him on account of the accident caused by the vehicle, insured with the appellant/Insurance

Company. The accident happened on 16.06.2014. The deceased Gopalappa had sustained left side rib fracture and he was hospitalised only for a period of 8 days from 18.06.2014 to 25.06.2014 as per the available evidence placed before the Tribunal. Gopalappa made a claim before the Tribunal on account of the injuries sustained by him as a result of the accident in M.C.O.P. No.42 of 2016. Only during the pendency of the Claim Petition, he died and the legal representatives had thereafter converted the injury claim to a fatal accident claim.

10.As seen from the Claim Petition, the pleadings have not been amended, which is also accepted by the learned counsel for the claimants. There must be a pleading with regard to the cause of the death of the deceased. In the instant case, there is no such pleadings in the Claim Petition. Being a beneficial legislation protecting the welfare of the accident victims, the claimants must be provided with one more opportunity to substantiate their claim for compensation on account of the accident caused by the vehicle, insured with the appellant/Insurance Company.

11.For the foregoing reasons, this Court is of the considered view that the impugned award has to be set aside by this Court and the matter remanded back to the very same Tribunal for fresh consideration, on merits and in accordance with law by directing the Tribunal to dispose of the Claim Petition within a time frame to be fixed by this Court, after affording an opportunity for both the parties to amend their respective pleadings if they so desire and also by permitting them to let in additional oral and documentary evidence in support of their respective contentions.

12.Accordingly, the impugned award passed by the Motor Accidents Claims Tribunal in M.C.O.P. No.42 of 2016 is hereby set aside and the matter is remanded back to the very same Tribunal i.e. the Motor Accidents Claims Tribunal, the Additional District Judge, Hosur for fresh consideration, on merits and in accordance with law. Both the parties are permitted to amend their respective pleadings and also let in additional oral and documentary evidence to substantiate their respective contentions. The Tribunal is directed to dispose of the Claim Petition within a period of six months from the date of receipt of a copy of this judgment. Accordingly, this appeal is disposed of. No costs. Consequently, connected petition is closed.

11.06.2024

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To

1.The Motor Accidents Claims Tribunal,
The Additional District Judge, Hosur.

2.The Section Officer,
V.R. Section, High Court, Madras.

**ABDUL QUDDHOSE, J.**

vga

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