IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.419 of 2020

1. Meena
2. Prakash
3. Kalyani ...Appellants/Petitioners

Vs.

1. Ponnudurai

2. The Divisional Manager,
United India Insurance Company Limited,
19, Sutha Complex, Neela South Street,
Nagapattinam. ...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the fair and decreetal order dated 20.02.2019 passed in MCOP.No.92 of 2015 by the Motor Accidents Claims Tribunal (Sub Court), Chidambaram.

For Appellants : Mr.K.Subburam

For Respondents : No Appearance, for R1
Mr.M.J.Vijayaraghavan, for R2

JUDGEMENT

Aggrieved by the very meagre compensation awarded by the Motor Accident Claims Tribunal, Sub Court, Chidambaram in M.C.O.P.No.92 of 2015 dated 20.02.2019, the claimants are before this Court.

2. Though the appeal was initially listed on 24.11.2023, on which date it was disposed of by this Court, however, before finalising the order, on going through the bundle, as this Court entertained certain doubts with regard to certain issues, at the instance of the Court, the case was listed for further hearing under the caption "For Clarification" and after hearing the learned counsel on either side, this Court proceeds to pass the following order.

3. Brief facts which are necessary for disposal of this appeal are as follows:-

The appellants are the wife, son and mother of the deceased Anbalagan. On 15.01.2015, at about 06.45 p.m., when the deceased Anbalagan was riding his TVS 50 XL bearing Registration No.TN-31-R-1179 from South to North in Chidambaran Bypass Road, near Kanniramanpillai Street, the 1st respondent's car bearing Regn.No.TN-31-B-W-7273 insured with the 2nd respondent insurance company, driven by its driver in a rash and negligent manner, dashed against the vehicle of the deceased as a result of which, the deceased sustained grievous injuries all over his body and head and he was taken to RMMCH and was admitted as inpatient and after taking 4 months treatment, the deceased passed away on 19.05.2015. Hence, the appellants, who are the dependents of the deceased Anbalagan have filed a claim petition before the Motor Accident Claims Tribunal, Chidambaram, seeking compensation of Rs.20,00,000/-.

4. Before the Tribunal, the claimants/appellants examined two witnesses viz., P.W.1 to P.W.2 and marked 6 documents viz., Ex.P.1 to Ex.P.21. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal awarded a sum of Rs.47,100/- as compensation to the claimants. Not satisfied with the same, the present appeal has been filed by the claimants seeking enhancement.

5 The learned counsel appearing for the appellants submitted that admittedly, the accident occurred on 15.01.2015 in which the deceased

suffered fracture in his right leg and grievous head injury and immediately the deceased Anbalagan was admitted in the hospital and he was discharged from hospital on 17.02.2015, after surgery and was advised to appear for review after two weeks and again he got admitted in hospital and he subsequently got discharged on 21.04.2015, after removing the plate implanted in his leg and the same is evident from Ex.P3 and P7. Further, when the deceased was admitted for the injuries suffered, the deceased was diagnosed with Diabetics and he was specifically advised to maintain strict diabetic diet and to review at medicine OP for diabetic status and was directed to appear for review after four weeks, i.e., on 21.05.2015. However, on 19.5.2015, the deceased passed away due to Cardiac arrest. It is the submission of the learned counsel that the death of the deceased is closely associated with diabetes, which had aggravated due to the injuries suffered and, therefore, the accident had been the cause of his death. Hence, the death of the said Anbalagan is clearly an after effect of the accident and he passed away only due to after effects of the accident and, therefore, the respondents are liable to compensate the claimants. While so, the Tribunal had mechanically arrived a conclusion that the death of the said Anbalagan is not due to accident and had awarded a meager compensation of

Rs.47,100/-, which is wholly unsustainable. Accordingly, he prayed for necessary compensation.

6. Per contra, learned counsel appearing for the 2nd respondent/insurance company submitted that, admittedly, the accident happened on 15.01.2005 and the deceased was hospitalised for the injuries sustained by him and the discharge summary of the deceased, which is marked as Exs.P-3 and P-7 clearly reveal that when the deceased was discharged, he was found normal and all his vitals were normal. The injuries sustained by the deceased, being fracture, was in no way connected with the death and so also the diabetes, which was diagnosed as Ex.P-12, the post-mortem certificate clearly reveal that the deceased had died of cardiac arrest and it was not associated with diabetes. That being the case, the death of the deceased not being connected with the accident, the insurer is not liable to compensate the claimants. The aforesaid facts have been properly appreciated by the Tribunal and had negatived the claim for compensation while awarding compensation for the medical expenses expended by the deceased, which is just and reasonable and, therefore, no interference is warranted with the said award.

7. Heard the learned counsel appearing on either side and perused the material documents available on record.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellants/claimants is with regard to the findings rendered by the Tribunal and the consequential inadequate compensation awarded by the Tribunal. Admittedly, the accident occurred on 15.01.2015 for which, the FIR came to be registered on the same date and in the said accident, the deceased sustained fracture in right leg and grievous injury in forehead. The discharge of the deceased vide Ex.P-3 shows that the vitals of the deceased was stable and the wound which was the result of the accident had also healed. Thereafter, for removal of plate, the deceased was readmitted and was discharged, which is evidenced by Ex.P-7 during which time as well the deceased was found to be in good health. However, when the deceased was admitted for the injuries suffered in the accident, he was diagnosed with diabetes for which the deceased was put on medication and certain instructions of lifestyle changes

were suggested. Even during the first review of the deceased, the diabetes was in the same region and similar medical was given to the deceased. The deceased was, thereafter, directed to come for review on 21.05.2015, however, as fate would have the last laugh, the deceased passed away on 19.5.2015. The above said facts are borne out by record.

9. The only ground on which the claim is made is that the diabetes, which was diagnosed with which the deceased was suffering had aggravated leading to his death and resultantly, it is the stand of the claimants that the accident and the consequential injuries had aggravated the diabetes and the deceased passed away and, therefore, the insurer is liable to pay compensation.

10. Though such a claim is made, which claim is rather too tall to even digest, the said claim with regard to aggravation of the diabetes on account of the injuries sustained by the deceased, leading to his death has not been established by any documentary materials. Rather, Ex.P-12, the post-mortem certificate of the deceased reveals that the medical expert, who had conducted the post-mortem had given opinion that the deceased had died due to cardiac

arrest. Diabetes is not shown to have been the cause of death and even the injuries have not been attributed with the cause of death.

11. Though the claimants claim that diabetes, which got aggravated is the cause of death, however, there is no scintilla of evidence to give such an inference. Ex.P-12 stares writ large on the face of the claimants negativing their stand and in the absence of the claimants examining any medical expert as to the cause of death of the deceased and not establishing the same, the diabetes with which the deceased was suffering cannot be held to be the cause of death. Further, the accident also having taken place almost five months back, the said accident cannot be said to be proximate to the death so as to hold that the accident had aggravated the diabetes which has led to the death of the deceased. Further, Ex.P-3 and P-7, the discharge summaries with regard to the deceased categorically establish that the deceased was in good health at the time of discharge. Therefore, reading Exs.P-3, P-7 and P-12 in tandem, the only inference that could be drawn is that the accident has no proximity to the cause of death and in this regard, the findings rendered by the Tribunal is based on proper appreciation of materials and the same does not require any

interference.

12. However, the only issue that crops up for consideration is the compensation that is to be paid to the claimants. True it is that the claimants are not entitled for compensation towards the death of the deceased, but definitely, the deceased had suffered injuries in the accident and had taken treatment and the accident had not been disputed. Also the offending vehicle has been attributed with fault, which belonged to the 1st respondent and was driven by its driver, which vehicle was insured with the 2nd respondent. Once the rash and negligent driving of the vehicle of the 1st respondent had been held to be the cause of the accident in which the deceased had suffered injuries, definitely for the injuries sustained by the deceased, he would be entitled to compensation at the hands of the insurer.

13. Though at the relevant point of time when the deceased was surviving and taking treatment, the deceased had not filed claim petition claiming compensation, however, after his demise, the claim petition has been filed by the claimants seeking compensation for his death, however,

considering the nature of the benevolent provision under the Motor Vehicles Act, compensation could be very well awarded by this Court for the injuries sustained by the deceased in the accident which is not his fault though the claimants could not be granted any compensation for the death of the deceased.

14. The deceased had sustained multiple fractures and also head injuries and had taken treatment in the hospital. In fact, the deceased was operated upon for fixing plate and, thereafter discharged and once again the deceased was readmitted for removing the plate, which had been implanted. Therefore, the expenses for the said surgery would have been incurred by the deceased and the injuries suffered for which surgery was performed for which the Tribunal had awarded a sum of Rs.47,100/-. In view of the injuries sustained, the deceased would definitely have suffered pain and suffering and towards the same, however, no compensation has been awarded under the said head. Considering the nature of injuries sustained, this Court feels that a sum of Rs.75,000/- could be awarded under the said head. Further, during the treatment period, the deceased would have lost his earning and fixing a sum of Rs.10,000/- per month, this Court awards a sum of Rs.50,000/- for the five

months during which the deceased was suffering with the injuries before his death. Further, the Tribunal has awarded a sum of Rs.10,000/- under the head Extra nourishment which is meagre and hence the compensation awarded under the said head stands enhanced to a sum of Rs.30,000/-. Further, a sum of Rs.5,000/- awarded by the Tribunal towards transportation expenses is also meagre and therefore, the compensation under the said head stands enhanced to a sum of Rs.25,000/- and to that extent, the award passed by the Tribunal stands modified.

15. Further, the deceased had suffered fracture, but due to his death, the disability suffered by him could not be assessed. Had the deceased not died, definitely the disability due to the fracture would have resulted in loss of earning to the deceased. In the considered opinion of this Court, though there is no material on which to base the disability suffered by the deceased, however the discharge summary and the nature of surgery and other treatment given to the deceased, this Court could safely fix the permanent disability of the deceased, had he survived, at 40% and adopting percentage method and fixing Rs.4,000/- towards per percentage of disability, an amount of

Rs.1,60,000/- could be awarded under the head "Disability". The compensation of Rs.22,100/- awarded by the Tribunal towards medical expenses is confirmed.

16. Accordingly, the compensation awarded by the Tribunal is modified by enhancing the same as under :-

Heads	**Awarded by the Tribunal (Amount in Rs.)**	**Awarded by this Court (Amount in Rs.)**
Loss of earning during treatment period (Rs.10,000/- * 5 months)	-	**Rs.50,000/-**
Loss of Disability (40 * Rs.4,000/-)	-	**Rs.1,60,000/-**
Transportation expenses	Rs.5,000/-	**Rs.50,000/-**
Attender charges	Rs.10,000/-	Rs.10,000/-
Extra nourishment	Rs.10,000/-	**Rs.30,000/-**
Medical expenses	Rs.22,100/-	Rs.22,100/-
Pain and suffering	-	**Rs.75,000/-**
Total	**47,100/-**	**Rs.3,97,100/-**

17. The appeal is allowed in part and the impugned award of the Tribunal is modified by enhancing the compensation amount from **Rs.47,100/-** to **Rs.3,97,100/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.92 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. From the above said award amount, the first appellant is entitled to 50% of the same along with interest while appellants 2 and 3 would be entitled to equal share in the balance 50%. On such deposit being made by the second respondent/Insurance Company, the Tribunal is directed to transfer the respective share of the appellants as apportioned above, less, the amount, if any, already withdrawn to the bank account of the respective appellants/claimants through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeal.

03.04.2024

NHS/GLN

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

To

1.The Motor Accident Claims Tribunal,
(Sub Court), Chidambaram.

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

M.DHANDAPANI, J.

NHS/GLN

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