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C.M.A.No.2341 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2341 of 2019

P.Kumar (died)
1.Revathi Kumar
2.Minor K.Gokul
3.Minor K.Dhanya

Minors are represented by their guardian
Mother Revathi Kumar

... Appellants

Vs.

1.Ramachandran

2.The New India Assurance Company Limited,
Having Office at City Divisional Office II,
No.863, Big Bazaar Street,
Coimbatore.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 27.02.2017 in M.C.O.P.No.65 of 2016 on the file of the Motor Accident Claims Tribunal (Special District Court), Erode.



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For Appellants : Mr.I.Pragadeesh
for M/s.S.Kaithamalai Kumaran

For R1 : No appearance

For R2 : Mrs.R.Sree Vidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 27.02.2017 in M.C.O.P.No.65 of 2016 on the file of the Motor Accident Claims Tribunal (Special District Court) at Erode (hereinafter referred to as "the Tribunal" for brevity).

2.The facts of the case are as follows :

On 19.12.2011 at about 07.00 p.m., when the deceased Kumar was walking along Pothanur East-West Main Road to go to V.K.Bakery, after he fully crossed the said road from North to South, the 1st respondent came in his motorcycle bearing Registration No.TN-37-X-0474, insured with the 2nd respondent Insurance Company, from East to West, in a rash and negligent manner and hit against the deceased, due to which, the deceased was thrown

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away and sustained multiple injuries all over the body. Immediately, the deceased was taken to the Fathima Hospital, where he took First Aid. Then, he was taken to Kovai CMC Hospital, then to Kovai K.G. Hospital for treatment. He underwent surgery and other related tests. An FIR was registered as against the 1st respondent in Crime No.346 of 2011. Thereafter, the deceased filed the claim petition in M.C.O.P.No.65 of 2016 before the Tribunal, claiming a compensation of Rs.30,00,000/-. The deceased died during the pendency of the claim petition and subsequently, his wife and children were impleaded as petitioners 2 to 4 in the claim petition.

3.Before the Tribunal, the wife of the deceased examined herself as P.W.1. One Vinoth Kumar, who was an eye-witness, was examined as P.W.2. The Medical Record Officer of K.G.Hospital, Kovai, was examined as P.W.3. The claimants marked Exs.P1 to P26 before the Tribunal. No witness was examined nor any document was marked on the side of the respondents before the Tribunal.



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4.The Tribunal, on considering the oral and documentary evidence on record, fixed the liability on the 1st respondent/driver of the two-wheeler and awarded a total compensation of Rs.2,45,000/- and directed the 2nd respondent/Insurer of the two wheeler to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of claim petition.

5.Aggrieved by the quantum of compensation awarded by the Tribunal, the claimants have preferred the above Appeal seeking enhancement of compensation.

6.Learned counsel appearing for the appellants/claimants would submit that the Tribunal has allowed only the medical bills from the date of accident in the year 2011 till 2012, and rejected the medical bills for the continuous treatment taken by the deceased after his discharge from the Hospital till his death in 2013. The learned counsel would further submit that, though the claimants have produced Exs.P1 to P26 to prove the expenditure incurred by the claimants for the continuous treatment



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undergone by the deceased and the respondents have not produced any evidence to disprove the same, the Tribunal has allowed only four medical bills, viz., Exs.P5 to P8 and awarded a sum of Rs.2,33,061/-, which is very very meagre. Therefore, the learned counsel prayed for enhancement of compensation.

7.*Per contra*, learned counsel appearing for the 2nd respondent Insurance Company would submit that the accident was in the year 2011, whereas, the deceased died in the year 2013, i.e., about two years later, and the appellants/claimants have not produced any evidence to show that the death was due to the accident. The learned counsel further submitted that no post-mortem certificate was marked before the Tribunal. The learned counsel further submitted that the Tribunal has rightly appreciated the documentary evidence and allowed the appropriate medical bills alone, which is just and reasonable and needs no interference. Hence, the learned counsel prayed for dismissal of this Appeal.



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WEB COPY 8. Heard the learned counsel on either side and perused the entire materials available on record.

9. The accident and the manner in which the accident took place, is not in dispute. The accident happened on 19.12.2011 and the deceased himself filed the claim petition claiming compensation before the Tribunal. After 20 months from the date of accident, the deceased died on 25.08.2013 during the pendency of the claim petition. However, there is no evidence on record to show that the deceased died only due to the accident. Finding that the claimants have not produced valid proof for the continuous treatment undergone by the deceased after getting discharged from the Hospital in the year 2012, the Tribunal has only allowed the medical bills during the admitted period of treatment and awarded a sum of Rs.2,33,061/- towards medical expenses. The Tribunal has also awarded a sum of Rs.12,000/- for ambulance charges for taking the injured to the Hospital. Accordingly, the Tribunal has awarded a sum of Rs.2,45,061/-, rounded to Rs.2,45,000/-. Though the award of the Tribunal under the above heads cannot be found



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fault with, in the opinion of this Court, the total compensation awarded by the Tribunal is very very meagre.

10.The claimants have pleaded that the deceased was working as Electrician at Plop Niyan Sign Company, Pothanur, at the time of accident and he was earning a sum of Rs.15,000/- per month. However, the claimants have not produced any proof of employment nor proof of monthly income. In such circumstances, taking into account the date of accident in the year 2011, this Court fixes the notional income of the deceased as Rs.8,000/- per month. Admittedly, the deceased was under treatment for a period of 6 months till he was discharged from the Hospital. Therefore, a sum of Rs.48,000/- ($\text{Rs.8,000/-} \times 6 = \text{Rs.48,000/-}$) is awarded under the head "Loss of income during the period of treatment". The amount of Rs.12,000/- awarded by the Tribunal towards "transportation charges to hospital (ambulance charges)" is on the lower side, and hence, the same is enhanced to Rs.20,000/-. Further, this Court awards a sum of Rs.20,000/- for "Attendant Charges" and a sum of Rs.20,000/- for "Extra nourishment".



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WEB COPY 11. Accordingly, the compensation under various heads are re-assessed as follows :

S.No.	Description/Head	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Medical Bills	Rs.2,33,061/-	Rs.2,33,061/- (Confirmed)
2.	Transportation Charges to Hospital (Ambulance Charges)	Rs.12,000/-	Rs.20,000/-
3.	Loss of Income	--	Rs.48,000/-
4.	Attendant Charges	--	Rs.20,000/-
5.	Extra Nourishment	--	Rs.20,000/-
	Total	Rs.2,45,061/- rounded to Rs.2,45,000/-	Rs.3,41,061/- rounded to Rs.3,41,000/-

12. Therefore, the total compensation awarded by the Tribunal is enhanced to Rs.3,41,061/- rounded off to Rs.3,41,000/- (Rupees Three Lakhs and Forty One Thousand only) along with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation. Out of which, the 1st appellant/wife is entitled to a sum of Rs.1,41,000/- (Rupees One Lakh and Forty One Thousand only) and the appellants 2 and 3, who are the minor children of the deceased, are entitled to a sum of Rs.1,00,000/-



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(Rupees One Lakh only) each. The appellants/claimants are entitled to receive proportionate interest thereon.

13.The 2nd respondent Insurance Company is directed to deposit the modified/enhanced award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment, less the amount, if any, already deposited. On such deposit being made, the 1st appellant is permitted to withdraw the modified/enhanced award amount, along with accrued proportionate interest and costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The share of the minors/appellants 2 and 3 shall be deposited in any one of the Nationalised Bank in an interest bearing deposit till they attain majority, and the 1st appellant/wife, being the natural guardian, is entitled to receive accrued interest thereon once in three months, from the Bank, for the benefit of the minors. If the minors have attained majority, it is open to them to file appropriate application before the Tribunal for withdrawal of their share along with proportionate interest and costs, and the Tribunal may pass appropriate orders on such application



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being made. The appellants/claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellants/claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required.

14. Accordingly, this Civil Miscellaneous Petition is partly allowed and the judgment and decree dated 27.02.2017 in M.C.O.P.No.65 of 2016 on the file of the Motor Accident Claims Tribunal (Special District Court) at Erode, is modified to the above extent only in respect of the quantum of compensation. No costs.

08.11.2024

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Internet : Yes

Index : Yes / No

Speaking order / Non-Speaking order

Neutral Citation : Yes / No

To

The Motor Accident Claims Tribunal
(Special District Court),
Erode.



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M. DHANDAPANI, J.

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