



C.M.A.(MD)No.1005 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD)No.1005 of 2024 &
C.M.P.(MD)No.10436 of 2024

Divisional Manager,
United India Insurance Company Limited,
254, Goods Shed Street,
Madurai - 625 001.

...Appellant

vs.

Sampath (died)

1.Geetha Natchiyar

Sri Varamangai (died)

2.Sathyanarayanan

3.Syed Sulaiman

... Respondents

(Amended as per order in I.A.No.387/22 dated 21.03.2022)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to set aside the Judgement dated 14.07.2023 passed in M.C.O.P.No.76 of 2019 on the file of the Special Sub Court (Motor Accidents Claims Tribunal), Madurai.



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For Appellant : Mr.I.Suthakaran

For Respondents : Mr.V.Sakthivel

JUDGMENT

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

The appellant is the United India Insurance Company Limited. Initially, one Sampath, filed a claim petition before the Special Sub Court (Motor Accidents Claims Tribunal), Madurai in M.C.O.P.No.76 of 2019 seeking compensation of Rs.20,00,000/- for the injuries sustained by him in a road accident that took place on 27.02.2018. Pending claim petition, Sampath died on 29.09.2019. Therefore, the legal representatives of the deceased Sampath impleaded themselves and prosecuted the claim petition. After enquiry, the Tribunal passed an award of Rs.63,32,800/- together with interest at the rate of 7.5% per annum. Challenging the said order, the appellant has filed the present appeal.

2. The brief facts of the case of the respondents / claimants is as follows:



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2.1. On 27.02.2018, at about 09.10 pm, the deceased Sampath who went to Madurai on Official Duty, went to Archana Hotel for dinner on T.B.Road and when he was crossing the T.B.Road in front of Western Park Hotel from north to south by walk, an auto bearing Registration No.TN 64 A 4288 belonging to the third respondent herein driven by its driver in a rash and negligent manner hit him. Due to the accident, Sampath sustained multiple injuries and got admitted in Velammal Hospital, Madurai for treatment from 28.02.2018 to 03.05.2018, 03.05.2018 to 20.05.2018 and 23.06.2018 to 29.06.2018 as an inpatient. Thereafter, though he was discharged from the Hospital, as per the advise of the Doctor, he was taking treatment as an outpatient till the date of filing the claim petition. There was some improvement in his health condition, but, he was not completely cured. Due to the accidental injuries, despite giving the best treatment, he was in coma (vegetative status) from the date of accident till discharge. During his lifetime, he filed the claim petition through his son since he was in coma stage. Pending claim petition, he died on 29.02.2019 leaving behind his wife, son and daughter as legal representatives. Subsequent to his death, the



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legal representatives impleaded themselves as dependents and prosecuted the claim petition. After enquiry, the Tribunal awarded a sum of Rs. 63,32,800/- together with interest at the rate of 7.5% per annum. Now, the Insurance Company has filed the present appeal challenging the award passed by the Tribunal.

3. The case of the appellant is that they denied the accident and the manner of the accident before the Tribunal. According to them, the accident occurred only due to the negligence on the part of the deceased Sampath since he suddenly crossed the road without any caution and invited the accident. The deceased during his lifetime has filed the claim petition claiming compensation for the injuries sustained by him in the road accident. Pending the claim petition, he died. Therefore, the claim petition ought to have been tried as an injury case and not as a fatal case. The subsequent claimants are not the dependents of the deceased and the claim is also on the higher side.



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4. Before the Tribunal, the Insurance Company filed their counter.

On the side of the claimants, five witnesses were examined as PW1 to PW5 and 25 documents were marked as Ex.P1 to Ex.P25. On the side of the respondents therein, three witnesses were examined as DW1 to DW3 and 6 documents were marked as Ex.D1 to Ex.D6. After considering the materials evidence on record and based on various decisions of the Honourable Supreme Court and this Court, the Tribunal awarded a sum of Rs.63,32,800/- together with interest at the rate of 7.5% per annum as compensation to the claimants. Challenging the same, the present appeal is filed by the Insurance Company.

5. The learned counsel appearing for the appellant would submit that the accident had occurred only due to the negligence on the part of the deceased. Further, the deceased sustained multiple injuries in the accident, for which, he took treatment as an inpatient and later he was discharged from the Hospital. During his lifetime, he filed the claim petition claiming compensation for the injuries and subsequently he died. Therefore, since the claim petition was originally filed for getting



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damages for the injuries sustained in the accident, the Tribunal ought to have passed the award only for the injuries. Whereas, the Tribunal wrongly considered the case as a fatal case and awarded the compensation and directed the appellant to pay the same to the claimants. As far as the quantum of compensation is concerned, the learned counsel would submit that even after the voluntary retirement of Sampath, he was getting pension and subsequent to his death, the first respondent would get family pension and therefore, there is no loss of income. Hence, adopting multiplier method as if the case is a fatal case is against the Scheme. Therefore, the award passed by the Tribunal is liable to be set aside and the quantum of the compensation has to be modified as that one for the injury case.

6. The learned counsel appearing for the respondents 1 and 2 would submit that the accident had occurred only due to the rash and negligent driving of the driver of the auto bearing Registration No.TN 64 A 4288. The said auto was insured with the appellant and the Insurance Policy was in force. Therefore, the appellant is liable to pay the



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compensation. He would further submit that though the claim petition was originally filed by Sampath through his son, pending claim petition, he died. Thereafter, the respondents 1 and 2 herein, wife and son of the deceased respectively and one Sri Varamangai daughter of the deceased were impleaded as dependents and they prosecuted the claim petition. The deceased had worked as a Head Constable at Tirunelveli Railway Protection Force, Southern Railway and was receiving a sum of Rs. 43,600/- as monthly salary. Therefore, the Tribunal adopted multiplier method and awarded a sum of Rs.63,32,800/- as compensation to the claimants, which is just and reasonable. There are no merits in the appeal and hence, the appeal is liable to be dismissed.

7. Heard both sides and perused the materials available on records.

8. Though the accident was denied by the appellant, they have not established that the accident had occurred only due to the negligence on the part of the original claimant / deceased. In order to substantiate the manner of the accident, PW2 was examined on the side of the claimants



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and the appellant has not let in any contra evidence. Therefore, since the offending vehicle was insured with the appellant, as an insurer, the appellant is liable to pay compensation.

9. A perusal of the records shows that originally the claim petition was filed by Sampath. It cannot be over sighted that the said claim petition was not directly filed by Sampath himself, but through his son, who is the second respondent herein. Further, a perusal of the oral evidence of PW3 and PW4 and documentary evidence Ex.P5 to Ex.P10, Ex.P14 and Ex.P22 to Ex.P24 establishes that due to the accidental injuries, Sampath was admitted in the Velammal Hospital and he took treatment for quite long time as an inpatient. Even after getting the best treatment, he could not fully recover and he was almost in coma (vegetative state).

10. The accident took place on 27.02.2018. He took treatment from 28.02.2018 to 29.06.2018 as an inpatient in Velammal Hospital without interval and subsequently, he was continuously taking treatment



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as an outpatient and died on 29.02.2019 exactly one year after the accident. During his life time, he filed the claim petition through his son, the second respondent herein and pending the claim petition, he died. Though Sampath was living nearly for one year after the accident, he was almost in coma (vegetative state) from the date of the accident till the date of the discharge and from the evidence of the Medical Officers and Doctors who gave treatment to him and also Ex.P14, Death Certificate, it could be seen that, he died only due to the accidental injuries and the same was not disproved by the appellant by letting in any contra evidence.

11. Prior to the accident, the deceased was working as a Head Constable with the Tirunelveli Railway Protection Force, Southern Railway and he was getting monthly salary of Rs.43,600/-. Due to the accident, he opted for retirement through Voluntary Retirement Scheme. Since due to the accident injuries, the deceased lost his job and died leaving behind the respondents 1 and 2, who are the wife and son of the deceased respectively, the Tribunal considered the case as a fatal case



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and applied multiplier method and awarded compensation to them. At the time of the accident, the deceased was aged about 57 years. Therefore the multiplier of 9 was adopted and a sum of Rs.63,32,800/- was awarded in toto under the heads of loss of income, medical expenses, attendant charges and transportation charges. Though the claim was made only for a sum of Rs.20,00,000/-, it is settled proposition of law that in suitable cases, the award amount can exceed the claim amount. On perusal of the records and after considering the material evidence, this Court as an Appellate Court finds that that award passed by the Tribunal reflects fair and just compensation. Hence, there are no merits in the appeal and the appeal is liable to be dismissed.

12. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

(P.V., J.) (K.K.R.K., J.)
19.09.2024

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order
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To

- 1.The Special Sub Court,
Madurai.
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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