



CMA.(MD)No.526 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 526 of 2021

and

CMP (MD) No. 4881 of 2021

Cholamandalam MS General
Insurance Company Ltd.,
Rep. by its Branch Manager,
Nagaraja Koil Cross Road,
Agasteeswaram Taluk,
Kanyakumari District. : Appellant/3rd Respondent

Vs.

S.Ramachandran (Died)

1.Ramalakshmi
2.Ram Kannan
3.Raja Kumaran : Respondents 1 to 3/
Petitioners 2 to 4

(Respondents 1 to 3 were
impleaded as LR's of deceased
Ramachandran as per order in
IA No.146/2018, dated 1/6/2018)

4.K.Sahaya Sajith
5.K.Leeman Theres Femila : Respondents 4 and 5/
Respondents 1 and 2

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed in MCOP No.107 of 2017, dated 17/03/2020 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Kanyakumari at Nagercoil.



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For Appellant : Mrs.K.R.Shivashankari
For 1st Respondent : Died
For R2 and R3 : Mr.G.Aravinthan
For R4 and R5 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed to set aside award passed in MCOP No.107 of 2017, dated 17/03/2020 by the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Kanyakumari @ Nagercoil.

2.The facts in brief:-

On 02/01/2017 at about 10.45 am, the deceased Ramachandran was riding his two wheeler bearing registration No.TN-74-P-8605 on Anjugramam-Mylandi Road. Near the place of occurrence, he was turning towards a lane on the northern side by proper signal. At that time, the first respondent was driving the Honda Dio Motor Bike bearing registration No.TN-74-AJ-7546 in the same direction in a rash and negligent manner and hit the deceased behind. As a result of which, he fell down and sustained multiple injuries all over his body. He was taken to Muthu Neuro Centre, Chunkankadi, Nagercoil, where surgery was conducted, plates and screws were fixed. He was inpatient from 03/01/2017 to 10/01/2017. Later, he was taking treatment as out patient.



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3.Over the occurrence, a case in Crime No.4 of 2017 was registered against the first respondent. Because of the accidental injuries, the deceased Ramachandran lost his mental capacity and was suffering from mental illness, etc. He was taking regular exercise of walking, cycling, gardening as advised by the Doctor. On 05/11/2017, when he was cycling, fell down and sustained injuries. On 07/11/2017, he was admitted in Manuel Orthopedics Hospital, Nagercoil. Surgery was conducted on 08/11/2017 and discharged on 11/11/2017. But his health condition did not improve. He died in the hospital called 'Morris Mathis Hospital', Nagercoil on 17/11/2017. Claiming compensation amount of Rs.25,00,000/-, the dependents filed the petition.

4.It was resisted by the 3rd respondent before the Tribunal, who is the appellant herein by filing counter stating that the accident took place due to the rash and negligent driving on the part of the deceased; He suddenly crossed the road and in that process, both vehicles collided against each other and both fell down and sustained injuries; There was no nexus between the death and the accident; The deceased was suffering from hypertension; He was also a chronic kidney patient; He was discharged from the hospital after full recovery; He



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fell down from the bicycle on his routine daily affairs;
In the fall only, he sustained fracture on the neck; He underwent surgery and discharged on 22/02/2017; Because of his kidney failure, he was admitted in the Morris Mathias Hospital, Nagercoil and died because of the Kidney failure on 17/11/2017. So, the death was not the direct cause for the accidental injuries.

5.Before the Tribunal, on the side of the claimants, 4 witnesses examined and 24 documents marked. On the side of the Insurance Company, no oral and document evidence was adduced.

6.At the conclusion of the enquiry, the Tribunal found that the first respondent is responsible for causing the accident and awarded a total compensation of Rs.7,82,800/-. Regarding the point of negligence, the Tribunal recorded a finding that since the first respondent admitted his guilt and paid fine in STC No.225 of 2018 before the Judicial Magistrate Court No.III, Nagercoil, no further discussion is required over that aspect and accordingly, recorded a finding that the first respondent vehicle driver was negligent in his driving.



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7. That portion of the finding of the Tribunal is not challenged by the appellant herein. So, that portion of the finding is confirmed, even on factual grounds in view of the admission of the guilt by the first respondent himself.

8. Regarding the proximity of death, it was found that due to the complications suffered by the deceased and accidental injuries, death occurred. So, the dependents are entitled for compensation from the Insurance Company. That portion of the finding of the Tribunal is now under serious challenge.

9. The entire records have been called for from the Tribunal and perused.

10. Before that, one point must be placed on record. Originally, the claim petition was filed by the deceased Ramachandran when he was alive for his accidental injuries. Pending enquiry process, he died. So the petition was amended seeking compensation for the death by the dependants.

11. Now, we will go to the evidence on record.



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12. There was no postmortem. The Tribunal went on to observe that it is not a case that postmortem must be conducted. There can be no quarrel on that proposition of law. But *prima facie*, it must be established on the side of the claimants that the death occurred due to the accidental injuries, in otherwise, the proximity of death and the accidental injuries must be properly brought on record.

13. We can directly go to the medical records submitted by the claimants. Ex.P16 is the Death Summary issued by Morris Mathias Hospital, Nagercoil. Wherein we find that the date of admission is noted as 12/11/2017. Date of death is 17/11/2017 at 10.00 am. He was admitted for neck femur fracture and pulmonary edema on dialysis. He was given antibiotic, dialysis, ventilatory support and other supportive measures. But without responding to treatment, he died due to respiratory arrest.

14. Now the claimants want to correlate the fall from the bicycle to the death by drawing inference that as per the advise of the Doctor to recover from the accidental post treatment complications, he was regularly undertaking cycling exercise. Only in that process, he fell down and sustained injuries. So, the post-treatment



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complication was the direct cause for the death. But, as mentioned in the Death Summary, the death occurred due to respiratory arrest. The ground raised, at no stretch of imagination, it can be made reference to the accidental injuries.

15.The occurrence took place on 02/01/2017. For about 10 months, he was alive. On the date of the accident, he was admitted in Muthu Neuro Centre, Chunkankadai, Nagercoil. At the time of admission, the following injuries were noted.

- 1.Right Foot Laceration (9 x 1 x 1 cm).
- 2.Right frontal abrasion.
- 3.Right wrist abrasion.
- 4.Fracture 1st, 3rd, 4th and 5th metatarsal.
- 5.Fracture 2nd and 5th proximal phalanx
- 6.Left Frontoparietal SDH.
- 7.Left temporal and parietal
haemorrhagic contusion.
- 8.Left tentorial SAH.

16.He underwent surgery on the date of admission and discharged on 10/01/2017. At that time, he was found conscious. It was a case of multiple fracture. On the Frontoparietal region, there was contusion. Later, he was admitted on 22/02/2017 after completing the surgical formalities. After that, there was no treatment regularly till 02/01/2017. Without the medical records for the intervening period, how the Tribunal has recorded a



finding is not clear on records. Except the Physiotherapy treatment bills under Ex.P21, so, it is not correct on the part of the Tribunal to record such a finding that death was due to the accidental injuries. So, the method of calculation adopted by the Tribunal required re-calculation.

17.Let us have the medical bills.

Medical and Hospital Bills (Ex.P7)	Rs. 60,359/-
Lab, Blood Bank and other Bills (Ex.P8)	Rs. 10,425/-
Medical and Hospital Bills (Ex.P10)	Rs. 27,474/-
Hospital, Blood Bank and other Bills (Ex.P13)	Rs. 60,045/-
Physiotherapy treatment Bills (Ex.P21)	Rs. 40,000/-
Total	Rs.1,98,303/-

18.So the above said amount must be awarded as compensation to the claimants, which was not be taken into account by the Tribunal. He was admitted in the hospital for more than twice for surgery and for follow up treatment. He is entitled to **Rs.20,000/-** towards Transport expenses. He might have undertaken nutritional food during the period. It may be fixed at **Rs.20,000/-**. Since, he was admitted as inpatient for more than once, attendant charges may be fixed at **Rs.20,000/-**. During the



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relevant period, the deceased Ramachandran was a daily wager, considering the mason work under Ex.P23, the notional income was fixed at Rs.9,000/-, which appears to be reasonable considering the age. He was taking Physiotherapy treatment upto 30/06/2017 at least for about 5 months, he would not have attended his regular work. For five months, the Loss of Income is fixed at **Rs.45,000/-**. It is added towards Loss of Estate. These amounts the claimants are entitled on the ground of loss to the estate of the deceased.

19.The recalculation of the award amount is indicated hereunder:-

Head	Award of the Tribunal	Award by this court
Loss of Dependency	Rs.7,12,800/-	-
Loss of Estate/ Loss of Income	Rs. 15,000/-	Rs. 45,000/-
Loss of consortium	Rs. 40,000/-	-
Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
Medical Bills	-	Rs. 1,98,303/-
Transport charges	-	Rs. 20,000/-
Nutritional Food	-	Rs. 20,000/-
Attender charges	-	Rs. 20,000/-
Total	Rs.7,82,800/-	Rs. 3,18,303/-



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20. With the above said modification, this Civil Miscellaneous Appeal is partly allowed. The award of the Tribunal is modified as Rs.3,18,303/-. The appellant Insurance Company is liable to pay the modified award amount of Rs.3,18,303/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit along with proportion costs. The claimants are entitled to get their respective shares as per the apportionment of the Tribunal. Excess amount if any available, the Appellate Insurance Corporation is entitled to get back the same from the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

13/06/2024

Index:Yes/No
Internet:Yes/No
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To,

1. The Motor Accident Claims Tribunal/
The Chief Judicial Magistrate,
Kanyakumari @ Nagercoil.
2. The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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