



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1215 of 2014

Palaniammal (Died)

S.Gunaseelan

... Appellant

Vs.

1.F.Nirmala Bastin

2.The Branch Manager,

The Oriental Insurance Company Ltd.,

216-A, Nethaji Road,

Madurai – 625 001.

... Respondents

*[Cause title accepted vide order dated 06.11.2024
made in M.P.No.1 of 2013 in C.M.A. Sr.No22409/2013]*

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the order dated 29.08.2012 made in M.C.O.P.No.195 of 2005, in the file of the Motor Accident Claims Tribunal, V Additional District Court, Madurai.

For Appellants : Mr.N.V.Sureshkumar

For Respondent No.1 : Exparte

For Respondent No.2 : Mr.S.Veeranasamy

JUDGEMENT

The claimants have preferred this Civil Miscellaneous Appeal to set aside the order, dated 29.08.2012 in M.C.O.P.No.195 of 2005, on the file of the Motor Accident Claims Tribunal/V Additional District Court, Madurai.



2. It is case of fatal. The claim petition was dismissed by the Tribunal in entirety, aggrieved over the same the present civil miscellaneous appeal is preferred.

3. The case of the claimant is that accident took place on 02.11.2001 at about 09.15 p.m., the deceased was travelling as a pillion rider in motor cycle which belongs to the 1st respondent. The rider of the motor cycle drove the vehicle in a rash and negligent manner and applied brake immediately, hence the deceased fell down, had sustained grievous injuries, then succumbed to the injuries and died on 01.02.2003. The Tribunal has dismissed the claim petition since the First Information Report was filed belatedly and subsequently the said FIR was closed as belated FIR. Further there is no post mortem report. And the claimants had not proved the unconscious stage of the deceased and various other reasons. The Tribunal has rendered a finding that the deceased needs future treatment as per medical report. For all these reasons, the claim petition was dismissed. Aggrieved over the same, the claimants have preferred this Civil Miscellaneous Appeal.

4. The Learned Counsel appearing for the 2nd respondent vehemently opposed the appeal and the contention of the claimant and submitted that the Tribunal has passed reasoned order and the same cannot be



interfered with. Further the Tribunal had rightly dismissed the claim since the FIR is belated and the same was closed as belated. The deceased had sustained injuries on 02.11.2001, but died on 01.02.2003 which is nearly after one year and three months, hence there is no nexus and prayed to dismiss the present appeal.

5. The first contention that of 2nd respondent is that the First Information Report was filed belatedly and subsequently the same was closed as time barred. This Court is of the considered opinion the fact that the FIR is belated and the same is closed as belated, can be a ground not to entertain the criminal prosecution. The effect of the belated FIR would be the accused cannot be punished under criminal laws. But the same cannot be a ground to dismiss the claim petition and decline compensation. The defendant has not denied the occurrence of accident. The fact remains the accident happened, the deceased sustained grievous injuries and died subsequently. Further the victim was admitted in the hospital and underwent treatment and the same is evident from the admission form and discharge summary issued by the Jawahar Hospitals, Madurai which is marked as Ex.P2. On perusal of the same it is seen that the deceased had taken treatment for a period of one month from the date of admission. The condition of the deceased was stated in the report as “the patient was brought to the Hospital for treatment in unconscious stage”. The



report also states that the patient was not responding to painful stimuli, pupils unequal in size and reacting. In Ex.P.2 the injuries has stated follows:

1. Right Parietal lacerated wound and right temporal contusion +
2. Right periorbital haematoma +
3. A lacerated injury of size 5 x 4 x 1 on over the dorsum of right foot.
4. The deceased underwent surgery on 03.11.2001 and the report has also stated that under GA, right temporal craniectomy and clot evacuation done.

6. The Ex.P.2 further states that the patient was discharged at request and referred to Government Rajaji Hospital. At the time of discharge, stage of the patient is stated as follows:

“patient is conscious, inappropriate verbal response, moving limbs, pupils actions”

7. Further it is seen that the deceased was treated for head injury, wherein the Head Injury Ward Card was issued to the victim and the same is marked as Ex.P.9. The death certificate issued by the Madurai Corporation states the cause of death is stated as (a) Cerebra Vascular Accident (b) Stroke, Encephalopathy and (c) Shock failure. This Court is of the considered opinion that when the victim had head injury the consequences of it is the stroke and



hence the death is due to the accident. The claimants had not filed any FIR in time, since they were hoping that the victim would recover from the injuries, hence the same cannot be a reason to decline the compensation.

8. Even though the Learned counsel appearing for second respondent vehemently opposed for granting compensation, for the reasons stated above this Court is inclined to grant appropriate compensation. Therefore, in order to meet the ends of justice, this Court is granting a sum of Rs.5,00,000/- without interest, as compensation. The 2nd respondent is directed to deposit the same, within a period of 8 weeks from the date of receipt of a copy of this Judgment, less the amount, if already deposited. On such deposit being made, the claimant is permitted to withdraw the same, as per Law. The claimant is directed to pay the balance Court fee or the same shall be deducted from the amount before disbursing.

9. With these observations, this Civil Miscellaneous Appeal is allowed. No Costs.

16.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
KSA

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To

1.The Motor Accident Claims Tribunal,
V Additional District Court,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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**Judgment made in
C.M.A(MD)No.1215 of 2014**

16.04.2024