



C.M.A.(MD)No.1132 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2023

PRONOUNCED ON : 11.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.1132 of 2017

Sakthivel (Died)

Chellammal

... Appellant / 2nd petitioner

Vs.

1.Muthulakshmi

2.The New India Assurance Company
Limited,
Represented by its Branch Manager,
674, Periyakulam Road,
Theni District.

... Respondents / Respondents

(1st respondent remained exparte before the lower Court)

(Cause title accepted vide Court order dated 09.11.2017 made in C.M.P.(MD)No.10049 of 2017)



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PRAYER: Civil Miscellaneous Appeal filed under Order 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 08.06.2017 passed in M.C.O.P.No.4 of 2013 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Theni.

For Appellant : Mr.S.Aravinda Kumar

For R-2 : Mr.D.Malaichamy

JUDGMENT

This Civil Miscellaneous Appeal has been directed against the Judgment and decree dated 08.06.2017 passed in M.C.O.P.No.4 of 2013 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Theni by the appellant / claimant seeking compensation awarded by the learned Tribunal earlier.

2. For the sake of convenience, the parties are referred herein as per their rank before the Trial Court.



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3. The brief facts in a nutshell are as follows:

(i) This is a case of injury. During the pendency of M.C.O.P.No.4 of 2013 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Theni, 1st petitioner / claimant died. As a result of which, his legal heir was impleaded as 2nd petitioner. On 16.04.2012, while the 1st petitioner was riding the bicycle from north to south direction in Kadamalaigundu road near Karattupatti bus stop, the 1st respondent's Mahindra van bearing registration No. TN60-X-9658 came from the same direction (i.e., north to south direction) hit behind the 1st petitioner's bicycle. As a result of which, the 1st petitioner sustained multiple grievous injuries. The injuries are as follows:

- a) Fracture on left hand knee;
- b) Fracture on right leg;
- c) Fracture on left forearm;
- d) Contusion injury on forehead;
- e) Bleeding injury on left eye, left hand; and
- f) Abrasion injury all over the body and head.

Immediately, after the accident, the 1st petitioner was taken to Theni Kandamanur Vilakku Government Hospital, wherein he was treated as inpatient from 16.04.2012 to 25.04.2012. Thereafter, he had continuously



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taken treatment as outpatient till the date of the filing of the claim petition and he had spent more than Rs.80,000/- (Rupees Eighty Thousand only) towards medical expenses. He was 53 years old, at the time of the accident. Hence, he had filed M.C.O.P.No. 4 of 2013 seeking compensation for the said injuries. The 1st respondent is the owner of the Mahindra van bearing registration No.TN60-X-9658 and the 2nd respondent is the Insurance Company in which the said vehicle was insured. The 1st respondent remained exparte before the Tribunal.

(ii) Three issues were framed by the learned Tribunal. Following which three witnesses were examined, i.e., the claimant / legal heir of the Sakthivel was examined as PW-1, Doctor one Chinnadurai was examined as PW-2, Junior Assistant, Theni Government Hospital was examined as PW-3 and Ex.P-1 to Ex.P-12 were marked on the side of the petitioners in which Ex.P-1 is the Discharge summary, Ex.P-2 is the FIR, Ex.P-3 is the accident register, Ex.P-4 is the charge sheet, Ex.P-5 is the rough sketch. Ex.P-6 is the observation Magazar, Ex.P-7 is the vehicle inspection report, Ex.P-8 is the copy of Judgment and decree, Ex.P-9 is the employees Insurance and retirement funding scheme of unorganized sectors of



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Government of Tamil Nadu, Ex.P-10 is the Insurance copy, Ex.P-11 is the driving license, Ex.P-12 is the death certificate. Neither any witness was examined nor any document was marked on the side of the respondents. One Court document was marked.

(iii) On the basis of the oral and documentary evidence and the arguments submitted by the respective parties before the Tribunal, the learned Tribunal had proceeded to conclude that the accident happened only due to the rash and negligence of the driver of the vehicle of the 1st respondent's van. Since the vehicle was insured in the 2nd respondent's Insurance Company, the learned Tribunal has fixed the liability on the part of the 2nd respondent. The Tribunal had concluded that since the 1st petitioner died during the pendency of the M.C.O.P.No.4 of 2013, the 2nd petitioner / daughter of the 1st petitioner was entitled to get compensation.

(iv) Though it was stated in the claim petition that the deceased was a agriculturist and earned Rs.8,000/- (Rupees Eight Thousand only) per month, there was no documentary evidence to prove the same.Hence, the



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learned Tribunal has fixed Rs.3,000/- (Rupees Three Thousand only) notionally as the monthly income of the deceased. Since the deceased was 53 years old, the relevant multiplier 11 was adopted. Accordingly, the yearly income would arrive at Rs.3,96,000/- (Rupees Three Lakhs and Ninety Six Thousand only) (Rs.3,000*12*11). After deducting 1/3rd (Rs. 1,32,000/-) for his personal expenses, the loss of income would arrive at Rs.2,64,000/- (Rupees Two Lakhs and Sixty Four Thousand only). Hence, the Tribunal had concluded that 2nd petitioner was entitled to get Rs. 3,04,000/- (Rupees Three Lakhs and Four Thousand only) as compensation. The details of the compensation awarded by the learned Tribunal are as follows:

S.No.	Description	Amount
1.	Loss of income	Rs. 2,96,000/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Pain and sufferings	Rs. 25,000/-
	Total	Rs. 3,04,000/-

(v) The above said award has been passed by the learned Tribunal on 25.06.2015. However, the said award was a exparte award. Hence, the Tribunal set aside the same and restored the M.C.O.P.No.4 of 2013 by



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order dated 07.12.2015 made in I.A.Nos. 87 and 88 of 2015. Thereafter, the 2nd respondent had filed a counter refuting the allegations put forth in the claim petition. Following which, the learned Tribunal proceeded to frame two issues afresh. Three witnesses were examined i.e., the claimant / legal heir of the Sakthivel was examined as PW-1, Doctor one Chinnadurai was examined as PW-2, Junior Assistant, Theni Government Hospital was examined as PW-3 and Ex.P-1 to Ex.P-12 were marked on the side of the petitioners in which Ex.P-1 is the Discharge summary, Ex.P-2 is the FIR, Ex.P-3 is the accident register, Ex.P-4 is the charge sheet, Ex.P-5 is the rough sketch. Ex.P-6 is the observation Magazar, Ex.P-7 is the vehicle inspection report, Ex.P-8 is the copy of Judgment and decree, Ex.P-9 is the employees Insurance and retirement funding scheme of unorganized sectors of Government of Tamil Nadu, Ex.P-10 is the Insurance copy, Ex.P-11 is the driving license, Ex.P-12 is the death certificate. One witness was examined, i.e., R.W-1 is the Senior Assistant of the 2nd respondent's Insurance Company and no document was marked on the side of the respondents.



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(vi) The learned Counsel appearing for the petitioner has submitted that the petitioner's death happened only due to the accident dated 16.04.2012. As a result of which, the deceased sustained grievous injuries for which he underwent continuous treatment till the date of his death i.e., on 13.11.2012. However, the learned Tribunal considered the fact that the 1st petitioner was ailing of heart disease even before the accident and hence, the 2nd petitioner failed to prove with appropriate documentary and oral evidence that the death had happened only by the injuries sustained in the accident on 16.04.2012. It was further taken into account by the learned Tribunal that the deceased was admitted on 16.04.2012 and discharged from the hospital on 25.04.2012 at his own request. It was also noted that even before the accident he was ailing of heart disease and blood pressure. However, on the basis of the evidence of P.W-2, he had deposed that all the injuries sustained at the time of the accident by the 1st petitioner were grievous. It was further contended that postmortem was not conducted on the body of the deceased after his death on 13.11.2012. As a result of which, cause of death could not be traced. For the said reasons, the learned Tribunal concluded that there was no direct connection between the injuries sustained by the 1st petitioner at the time of the accident on 16.04.2012 and the cause of death which happened on



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13.11.2012. In the above circumstances, the learned Tribunal proceeded to conclude that M.C.O.P.No. 4 of 2013 was liable to be dismissed, since the 1st petitioner died, by following the judgment of this Court passed in C.M.A.(MD)No.1321 of 2010, New India Assurance Co., Ltd., Vs., S.Pooranam. The relevant portion of the same is extracted as follows:

“On coming to the instant case on hand as discussed in the foregoing paragraphs, the death of the injured claimant was not caused as a result of the accident and hence this Court without any hesitation holds that the first respondent / second claimant being the wife of the injured is not entitled to any relief as the cause of action does not survive to her. Though the arguments in this connection was put forth before the Motor Accident Claims Tribunal, unfortunately, the Tribunal has lost sight upon it and proceeded to pass an award of Rs.75,000/- without any justifiable cause. Under this circumstances, the award of the Tribunal is liable to be set aside”

Accordingly, the learned Tribunal has dismissed the claim petition in M.C.O.P.No. 4 of 2013 dated 08.06.2017. Challenging the same, the present Civil Miscellaneous Appeal has been filed to set aside the Judgment and decree dated 08.06.2017 and pass an award as prayed for.



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4. The learned Counsel appearing for the appellant / 2nd petitioner has submitted that the death had happened only because of the injuries sustained by the accident. The learned Tribunal has failed to consider that there was only 7 months time between the date of accident and the death of the 1st petitioner. Hence, the judgment and decree passed by the Tribunal is not in accordance with law and the same should be set aside.

5. Per contra, the learned Counsel appearing for the respondents has submitted that the Tribunal had considered all the materials and evidence available on record and passed the judgment which is just, fair and reasonable. Hence the order of the Tribunal is in accordance with law and the same has to be confirmed.

6. Heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the respondents and perused the materials available on record.



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7. On critical perusal of the oral and documentary evidence and the submissions made by both the Counsels, I do not find any demerits in the order passed by the Tribunal. Taking into consideration that the death of the 1st petitioner was not caused as the result of the accident dated 16.04.2012 and that he later died after a span of seven months, I have no hesitation to hold that the 2nd appellant / 2nd claimant being the daughter of the injured is not entitled to any relief as the cause of action does not survive to her. In view of the same, I am not inclined to interfere with the order passed by the Tribunal. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

11.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml



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To

The Motor Accident Claims Tribunal/
(Subordinate Judge)
Theni.

Copy to

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



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L.VICTORIA GOWRI, J.,

Sml

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