



CMA(MD).No.774 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.07.2024

PRONOUNCED ON : 12 .07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.774 of 2019
and CMP(MD).No.11034 of 2019

Nageswari

.....Appellant/Petitioner

Vs.

1.Anilkumar

2. Bajaj Allianz General Insurance Co.Ltd.
Through its Branch Manager
Anugraha II Floor
M.G.Road, Pazhavangudi
Trivandrum 695 023

Velayuthapandian (died)

(Notice to the 1st respondent is given up)

(Memo dated 10.01.2024 presented before the Court on 10.01.2024 is recorded to the effect that notice is served to the first respondent dispensed with as he was set exparte before the Tribunal vide Court order dated 10.01.2024)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to allow this appeal and enhance the award amount in MCOP.No.838 of 2014 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Tirunelveli dated 08.12.2017.



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For Appellant : Mr.T.Selvakumaran
R1 : Dispensed with
For R2 : Mr.J.S.Murali

J U D G M E N T

The instant appeal has been filed by the claimant challenging the dismissal of her claim petition in MCOP.No.838 of 2014 on the file of the Motor Accident Claims Tribunal /III Additional District Court, Tirunelveli.

2.According to the claimant, her son Saravanan while he was standing near toll gate to collect toll fee, a Toyota Qualis Car owned by the first respondent insured with the second respondent had come in a high speed and attempted to jump the toll gate barrier to escape the payment of entry fee, the vehicle hit against the deceased and crushed him with electric pole nearby. The deceased sustained serious injuries and later, he passed away.

3.According to the claimant, the deceased was employed in toll gate collection work and he was also owning a quarry business and thereby earning a monthly salary of Rs.20,000/-. He is the only bread-winner of the family. The claimant had sought for a compensation of Rs.20,00,000/-.

4.The insurance company had filed a counter contending that the death was not due to the accident, but it was a case of murder and therefore, the Motor Vehicles Act will not apply to the facts of the case. It has further



contended that a charge-sheet has been laid under Section 302 of I.P.C before the Sessions Court (FTC)/ III Additional District Court, Tirunelveli. The District Judge had found the accused guilty under Section 304 (part) IPC and convicted the accused to undergo 5 years rigorous imprisonment. Therefore, it is not the case of the negligence on the part of the driver of the Qualis Car and hence, they have prayed for dismissal of the claim petition.

5.The Tribunal in Paragraph No.19 of the award has held as follows:

“19.....A statutory investigating agency had conduct investigation and found the occurrence to be a murder. From Ex.P1 the FIR and Ex.P3 the charge sheet the occurrence goes to show it was clear case of murder simpliciter. There is nothing to infer there was other felonious act as stated by the petitioner that resulted in the occurrence. Further the evidence of PW2 does not support the case of the petitioner to conclude that the occurrence was an outcome of a felonious act as alleged. Hence, it is inferred the death of the deceased namely the son of the petitioner was only an intentional killing by using a motor vehicle. Hence, the test as stipulated in the Rita Devi case only goes to show that it was an act of murder simpliciter and not in furtherance of any other crime or consequential to some other crime to hold it was an accident murder. Hence, it is held the cause of death of the deceased was murder simpliciter and it cannot be attributed to the rash and negligence of the 1st respondent driver and Point No.1 and 2 are answered accordingly.



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6.However, the Tribunal has proceeded to fix the compensation at Rs.7,84,000/-, but dismissed the claim petition on the ground that it is not a case of the accident involving motor vehicle. Challenging the same, the present appeal has been filed by the claimant.

7.The claimant had filed CMP(MD).No.11034 of 2019 under Order 41 Rule 27 of C.P.C to receive the certified copy of the judgment in CrI.A(MD).No.244 of 2006 as additional evidence. The said appeal has been filed by the accused persons who were involved in the said incident challenging their conviction under Section 304 of I.P.C. The learned counsel appearing for the insurance company had sought time on 24.04.2024 to file counter to the additional evidence application. On his request, it was adjourned to 06.06.2024, 27.06.2024, 10.07.2024. Even on 10.07.2024, the counter was not filed. Considering the fact that the additional evidence sought to be marked is the certified copy of the judgment in the criminal appeal delivered by the High Court, this Court is inclined to allow the said application and mark the said document as Exhibit P1.

8.The learned counsel appearing for the appellant/claimant had contended that on appeal filed by the accused person, the Hon'ble High Court was pleased to acquit them under Section 304(ii) I.P.C and convicted them under Section 304(A) I.P.C for causing death by negligence. Therefore, it is clear that it is only a case of accident and not murder. Hence, he prayed for



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setting aside the dismissal of the claim petition and to award compensation.

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9.Per contra, the learned counsel appearing for the insurance company had contended that originally the accused persons have been convicted by the trial Court. On appeal, the Hon'ble High Court has confirmed the conviction, but has only modified the conviction from 304(ii) I.P.C to 304-A I.P.C. Therefore, the order of the High Court in the criminal appeal will not in any way support the case of the claimant. The trial Court has relied upon the F.I.R and the charge sheet and has proceeded to hold that the incident is not an accident involving a motor vehicle but an intentional murder. Hence, he prayed for sustaining the order passed by the Tribunal.

10.I have considered the submissions made on either side and perused the material records.

11.The only ground on which the Tribunal had dismissed the claim petition is that Exhibit P1-F.I.R and Exhibit P3-charge sheet reveal that the occurrence is a case of a murder and not an accident and therefore, the death of the deceased cannot be attributed to the rash and negligent driving on the part of the driver of the first respondent.

12.Though the accused person in the said case were convicted under Section 304 I.P.C by the trial Court, the driver of the vehicle had filed an appeal in CrI.A.(MD).No.244 of 2006 before this Court. The order in paragraph Nos.9 and 10 is extracted as follows:



“9.Under such circumstances, the deceased was having a group of person and on his command PWs.1 to 4 along with deceased tried to attack the accused. That is the reason the accused moved the van immediately. Due to which he lost his control and dashed against the electric post, because the deceased was stepped into the van and man handled the accused. Due to which, this impact had happened. Neither the Motor Vehicle Inspector was not examined nor his report is available before this Court. If it has been produced, this Court could have been known that which portion of the van had dashed against the electric post. Whereas, admittedly, as per the evidence, on the right door step only, the deceased was hanging. Therefore, under such circumstances, I am of the view that the deceased had no intention to commit that mistake and commit the murder of the deceased. Hence, it is purely an accident because of the provoking method of the deceased as well as by P.Ws 1 to 4.

10.Therefore, I am of the view that the trial Court has committed an error sentenced the accused under Section 304(ii) I.P.C and that portion has been set aside and the accused is convicted for the offence under Section 304(A) I.P.C. It was represented that the accused has already undergone 9 months imprisonment. Since the accused has already undergone imprisonment, a sum of Rs.5,000/- alone is imposed as fine amount. The bail bonds shall stand cancelled.”

13.It is therefore clear that this Court has arrived at a specific finding that the trial Court has erred in sentencing the accused under Section 304(ii) I.P.C and has convicted the driver for the offence under Section 304(A) I.P.C.



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14.A careful reading of the said judgment clearly reveals that the deceased was engaged in the duty of collecting toll charges and parking charges for the vehicles and due to the rash and negligent driving on the part of the driver of the vehicle, the vehicle had dashed against the deceased person and he had succumbed to the injuries. In such circumstances, this Court is of the considered opinion that the deceased had died out of an accident arising out of the use of motor vehicle.

15.The Tribunal had fixed the notional monthly income at Rs.5000/- and deducted 50% towards personal expenses. The Court had applied multiplier of 17 and has added 40% towards future prospects. Ultimately, the Court has awarded a sum of Rs.7,84,000/- including the award amount under the conventional heads. This Court does not find any reason to interfere with the quantum of compensation.

16.In view of the above said deliberations, this Court passes the following orders:

(i)The order of the Tribunal is hereby set aside and the appeal is allowed.

(ii)The quantum is fixed at Rs.7,84,000/- which would carry interest at the rate of 7.5% interest per annum excluding the period of default, if any.



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(iii)The respondents 1 and 2 are jointly and severally liable to pay the above said award amount along with interest within a period of 8 weeks from the date of receipt of a copy of this judgment.

(iv)On such deposit, the claimant is entitled to withdraw the award amount along with accrued interest and costs.

17.In the result, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above and CMP(MD).No.11034 of 2019 is allowed. No costs.

12 .07.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Motor Accident Claims Tribunal
/III Additional District Judge
Tirunelveli

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



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.774 of 2019
and CMP(MD).No.11034 of 2019

12.07.2024