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C.M.A.No.2972 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2972 of 2022

Mohammed Haneef (Since Died)
Jeyanthi

... Appellant / Petitioner

Vs.

1.R.Thirumal

2.United India Insurance Company Limited,
Silingi Building,
No.134, Greams Road,
Chennai – 600 006.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 05.09.2022 made in M.C.O.P.No.2467 of 2017 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes Court, Chennai.

For Appellants : Ms. K. Sathya
For Mr. S. Ravikumar

For R1 : Vacated

For R2 : Mr. P. Sankaranarayanan



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JUDGMENT

This Civil Miscellaneous Appeal filed by the second petitioner in the claim petition, who is the legal heir of injured (first claimant) seeking enhancement of compensation awarded in M.C.O.P.No.2467 of 2017, dated 05.09.2022 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The only point arises for consideration in this appeal is that whether the legal heir of the injured claimant is entitled to get compensation under the head loss of income and also for disability.

4. Before the Tribunal, during pendency of the claim petition, the injured person was referred for Medical Board assessment of his disability and the Medical Board fixed the disability of the injured as 28% non-functional disability. Subsequently, injured was died, not based on the



personal injuries sustained in the accident. His wife, the second claimant was impleaded and proceeded with the claim petition, claiming compensation under Section 166 of the Motor Vehicle Act, 1988.

5. According to the claimant, her husband had undergone in-patient treatment at Apollo Spectra Hospital, Chennai from 22.01.2017 to 27.01.2017 for the injuries sustained by him and diagnosed as fracture left femur and fracture right tibia and fibula and the Discharge Summary-Ex.P4 and Medical Bills-Ex.P5 were also marked by her. Though the Tribunal has awarded compensation under the head attender charges during the treatment period, has not awarded any compensation under the head loss of income during the treatment period to the claimant. The claimant was not awarded compensation under the head disability. However, compensation is granted under various heads such as Medical Expenses, Nutrition Expenses, Loss of Transportation and also Attender Charges as stated supra.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed this appeal, seeking enhancement of compensation.



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7. The learned counsel for the appellant submits that though the injured was not died due to the personal injuries sustained by him in the road accident, the legal representatives of the injured is entitled to get compensation under various heads since the legal heirs is entitled to succeed the estate of the injured in this case. He has also relied on the Apex Court Judgment in ***Oriental Insurance Company Ltd., vs. Kahlon @ Jasmail Sigh Kahlon (deceased) through his Legal Representatives (2021 (2) TNMAC 305 SC)***.

8. The Hon'ble Apex Court in the Judgment cited supra has considered the scope of awarding compensation for the legal representatives of the injured person, who died during the pendency of the claim petition and approved awarding of granting compensation to the legal representatives, on the ground that the legal representatives are entitled for receiving compensation towards loss of estate of the deceased person. The relevant paragraphs which deals for awarding compensation under the head Loss of Estate reads as follows:

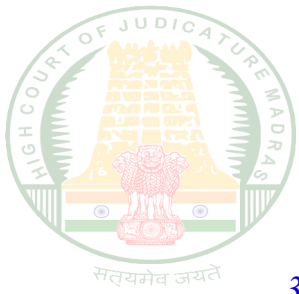
*“9. **The Act** is a beneficial and welfare legislation. **Section 166(1)(a)** of the Act provides for a statutory claim for*



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compensation arising out of an accident by the person who has sustained the injury. Under Clause (b), compensation is payable to the owner of the property. In case of death, the legal representatives of the deceased can pursue the claim. Property, under the Act, will have a much wider connotation than the conventional definition. If the legal heirs can pursue claims in case of death, we see no reason why the legal representatives cannot pursue claims for loss of property akin to estate of the injured if he is deceased subsequently for reasons other than attributable to the accident or injuries under Clause 1(c) of [Section 166](#). Such a claim would be completely distinct from personal injuries to the claimant and which may not be the cause of death. Such claims of personal injuries would undoubtedly abate with the death of the injured. What would the loss of estate mean and what items would be covered by it are issues which has to engage our attention. The appellant has a statutory obligation to pay compensation in motor accident claim cases. This obligation cannot be evaded behind the defence that it was available only for personal injuries and abates on his death irrespective of the loss caused to the estate of the deceased because of the injuries.

*10. In **Umed Chand** (supra), giving a broad liberal interpretation to the provisions of the Act so that legal representatives do not suffer injustice, it was observed that the claim for personal injuries will not survive on death of the injured unrelated to the accident but the legal representatives could pursue the claim for enhancement of the claim for loss of the estate which would include expenditure on medical expenses, travelling, attendant, diet, doctor's fee and reasonable monthly annual accretion to the estate for a certain period. It is trite that the income which a person derives compositely forms part of the expenditure on himself, his family and the savings go to the estate. The unforeseen expenses as aforesaid naturally have to be met from the estate causing pecuniary loss to the estate.*



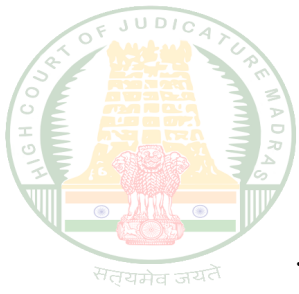
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11. In **Maimuna Begum** (supra) the defence under **Section 306** of the Indian Succession Act, 1925 on the old English Common Law maxim “*actio personalis moritur cum persona*” was rejected opining that it would be unjust to non-suit the heirs on that ground.

12. In **Venkatesan** (supra), the injured claimant preferred an appeal dissatisfied, but was deceased during the pendency of the appeal. Compensation came to be awarded under the Act for loss of estate keeping in mind the nature of the injuries, the treatment, the expenditure incurred and loss of income.

13. In **Surpal Singh** (supra), Justice K.S. Radhakrishnan, C.J. (as he then was), observed that the Act was a social welfare legislation providing for compensation by award to people who sustain bodily injuries or get killed. The grant of compensation had to be expeditious as procedural technicalities could not be allowed to defeat the just purpose of the act. The Courts in construing social welfare legislations had to adopt a beneficial rule of construction which fulfils the policy of the legislation favorable to those in whose interest the Act has been passed. Judicial discipline demanded that the words of a remedial statutes be construed so far as they reasonably admit so as to secure that relief contemplated by the statute and it shall not be denied to the class intended to be relieved. Rejecting the maxim of “*actio personalis moritur cum persona*” on the premise that it was an injury done to the person and the claim abated with his demise it was observed:

“11. The question as to whether injury was personal or otherwise is of no significance so far as the wrong doer is concerned and he is obliged to make good the loss sustained by the injured. Legal heirs and legal representatives would have also suffered considerable mental pain and agony due to the accident caused to their kith and kin. Possibly they might have looked after their dear ones in different circumstances, which cannot be measurable in monetary terms. We are therefore in



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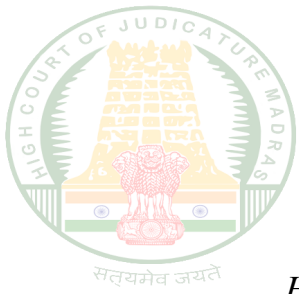


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full agreement with the view expressed by the learned Single Judge of this Court in Gujarat State Road Transport Corporation's case (supra) that even after death of the injured, the claim petition does not abate and right to sue survives to his heirs and legal representatives."

14. This view has subsequently been followed in a decision authored by brother Justice M.R. Shah J., (as he then was) in *Madhuben Maheshbhai Patel vs. Joseph Francis Mewan and Others*, 2015 (2) GLH 499, holding as follows:

*"12....Considering the aforesaid decision of the Division Bench of this Court in the case of **Surpal Singh Ladhubha Gohil** (supra); decisions of the learned Single Judge of this Court in the case of **Jenabai Widow of Abdul Karim Musa** (supra) and in the case of **Amrishkumar Vinodbhai** (supra); and aforesaid two decisions of the learned Single Judge of the **Rajasthan High Court**, we are of the opinion that maxim "actio personalis moritur cum persona" on which [Section 306](#) of the Indian Evidence Act (sic [Indian Succession Act](#)) is based cannot have an applicability in all actions even in an case of personal injuries where damages flows from the head or under the head of loss to the estate. Therefore, even after the death of the injured claimant, claim petition does not abate and right to sue survive to his heirs and legal representatives in so far as loss to the estate is concerned, which would include personal expenses incurred on the treatment and other claim related to loss to the estate. Under the circumstances, the issue referred to the Division Bench is answered accordingly. Consequently, it is held that no error has been committed by the learned Tribunal in permitting the heirs to be brought on record of the claim petition and permitting the heirs of the injured claimant who died subsequently to proceed further with the claim petition. However, the claim petition and even appeal for enhancement would be confine to the claim for the loss to the estate as observed hereinabove."*



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*15. Similar view has been taken by the Punjab & Haryana High Court in **Joti Ram vs. Chamanlal**, AIR 1985 P&H 2 and the Madras High Court in **Thailammai vs. A.V. Mallayya Pillai**, 1991 ACJ 185 (Mad).*

16. The view taken in Kanamma (supra) and Uttam Kumar (supra) that the claim would abate is based on a narrow interpretation of the Act which does not commend to us. The reasoning of the Gujarat High Court is more in consonance with aim, purpose and spirit of the Act and furthers its real intent and purpose which we therefore approve.

.....

20. We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's fee, etc. including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased."

9. The learned counsel for the respondents submitted that in this case, the disability of the injured was assessed by the Medical Board and before adducing evidence regarding disability, the injured was died. Hence, he has submitted that there is no need for granting compensation under the head disability to the claimant however, the claimant is entitled for compensation under the head loss of income during the treatment period.



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10. The Hon'ble Apex Court has laid down the principle that on the death of the injured /claimant, the claim petition does not abate and right to sue, survives on the legal heirs in so far as the loss of estate is concerned. The head loss of estate was further clarified that it includes, personal expenses incurred on the period of treatment and other claims related to loss of estate. The Apex Court has also awarded compensation for the head Loss of Income during the period of disablement, Medical Expenses and Attender Charges.

11. In view of the precedents laid down by the Apex Court, I am of the view that the claimant herein is also entitled compensation under the head loss of income during the period of disablement. As per evidence placed on record, the injured has sustained fracture of left femur and both arms fracture on the right leg. He was undergone in-patient treatment for 6 days and thereafter, there was no documents produced to show that the claimant was further admitted in to the hospital and further in-patient treatment was given or not. Considering the same, I am of the view that since two fractures were noted i.e., right leg femur as well as both bone fractures, 3 months of income to be awarded under the head loss of income



during treatment period would be appropriate. The accident had happened on 22.01.2017 and by considering the age of the deceased, fixing the notional income of Rs.13,000/- would be just and proper by following the Judgment of this Court in *Andal and 2 others vs. Avinav Kannan and another (2019 (1) TN MAC 54 (DB))*, this Court is inclined to fix the notional income of the injured / claimant at Rs.13,000/-. Accordingly, a sum of Rs.39,000/- (13,000 x 3 = 39,000) awarded under the head Loss of Income during the period of treatment.

12. As far as the compensation awarded under other heads are concerned, the Tribunal has rightly awarded just and fair compensation and this Court finds there is no need for interference and the same are hereby confirmed.

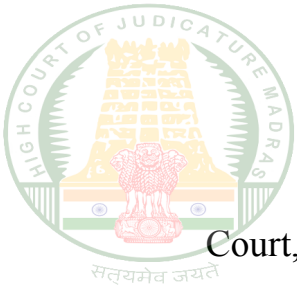
13. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Medical Expenses	Rs.2,36,625/-	Rs.2,36,625/-	Confirmed



2.	Nutrition Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Attender Charges	Rs.5,000/-	Rs.5,000/-	Confirmed
4.	Loss of Transportation	Rs.5,000/-	Rs.5,000/-	Confirmed
5.	Loss of Income during Treatment Period	---	Rs.39,000/-	Granted
	Total Compensation	Rs.2,61,625/- rounded off Rs.2,61,700/-	Rs.3,00,625/-	Enhanced by Rs.38,925/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,61,700/- is hereby enhanced to Rs.3,00,625/- [Rupees Three Lakhs Six Hundred and Twenty Five only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The Insurance Company is directed to deposit the amount now awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2467 of 2017 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes



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Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount already withdrawn, if any. The Tribunal shall disburse the amount now awarded by this Court by crediting in to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

23.01.2025

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

1. The V Judge, Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR., J.

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