

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

TR.CMP No.288 of 2014

M.Vimala

... Appellant

Vs

1.P.Ochukalai @ Occhathevar

2.O.Aruvam

3.V.Ravikumar

4.Shriram General Insurance Company Ltd.,

Branch office at 441012,

Nagappa Complex, 2nd Floor, 1076,

Mettupalayam Road,

North Coimbatore.

...

Respondents

Prayer: This transfer petition is filed under Section 24 of Cr.P.C. to withdraw the MCOP No.21 of 2014 pending on the file of the MACT/I Additional District Court at Tiruppur and to transfer it to MACT/Special Sub Court for MCOP cases at Coimbatore to be tried alongwith MCOP No.518 of 2014.

For Appellant : Mr.Ma.P.Thangavel

For RR1 & 2 : Mr.S.S.Swaminathan

For RR4 : Mr.S.Dakshinamoorthy

J U D G M E N T

The transfer petition has been filed by the wife of late Mahendiran to transfer the proceedings in MCOP No.21 of 2014 filed by the respondents 1 and 2 before the MACT / First Additional District Court at Tiruppur and to transfer it to the file of MACT / Special Sub Court for MCOP cases at Coimbatore where MCOP No.518 of 2014 filed by the petitioner for compensation regarding the death of her husband Mahendiran in the accident occurred on 05.01.2014 to be tried together.

2. Notice was ordered to all the respondents. Heard Mr.Ma.P.Thangavel, learned counsel for the petitioner, Mr.S.S.Swaminathan, learned counsel appearing on behalf of the first & second respondents and Mr.S.Dakshinamoorthy, learned counsel appearing for the Insurance Company.

3. In the Lok Adalat organised by Coimbatore District, already an award was passed in MCOP No.256 of 2014 filed by the petitioner in respect of the injuries sustained by her in the very same accident occurred on 05.01.2014 which was also acted upon. Therefore, the question of negligence is not considered and notice to the third respondent is dispensed with.

4. Though the Transfer petition has been filed, taking into consideration of the condition of the petitioner, it will be difficult for her to go to the Trial Court and face the trial for getting award. Since the liability is not in question, the only issue to be determined is with regard to the quantum of compensation. Therefore, instead of disposing of the transfer petition, this Court takes up the matter for disposing of MCOP No.518 of 2014 filed by the petitioner as well as MCOP No.21 of 2014 filed by the respondents 1 and 2 with regard to the death of same person namely, late Mahendiran.

5. All the parties including the insurance company have got no objection for deciding the main issue, viz. the quantum of compensation by this court. If the matter is sent back to the Trial Court, it will take a long time for trial and even after disposal of the claims, the parties have to approach this court by way of an appeal and in that process, enjoying the benefit of the award to be passed by the tribunal would be delayed.

6. The petitioner/claimant lost her husband at the young age of 22 years, within four months of her marriage. Treating the case as an extraordinary, this court is inclined to dispose of this petition alongwith MCOPs together.

7. The husband of the petitioner was travelling in his motor vehicle from West to East direction on Palladam to Coimbatore Main road and a Maruti ECO Ambulance Van belonging to the third respondent, insured with the 4th respondent, driven rash and negligently with speed, dashed against the motor cycle causing the accident. In the said accident occurred on 05.01.2014, the petitioner's husband and the son of the first and second respondents died and the petitioner, who is the daughter-in-law of respondents 1 and 2, also sustained severe injuries.

8. It is narrated by the petitioner that when she and her husband were suffered by bleeding injuries, the persons who were passing through the accident spot were only seeing them without helping and some of the fellow human, exhibited their inhuman nature by drawing gold jewels and valuables from her. Her husband died on the spot and the petitioner was taken to Coimbatore Medical College Hospital where she was given treatment.

9. Regarding the compensation for the injuries sustained by her, she filed MCOP No.256 of 2014 and the same was settled by the insurance company before the Lok Adalat held on 06.12.2014 by which a sum of Rs.13,50,000/- was awarded to the petitioner.

10. With regard to the compensation for the death of her husband, the petitioner filed MCOP No.518 of 2014 claiming compensation of Rs.50,00,000/- before the Special Subordinate Judge for MCOP cases at Coimbatore. The first and second respondents, the parents of the deceased Mahendiran filed MCOP No.21 of 2014 claiming Rs.30,00,000/- as compensation before the First Additional District Judge, Tiruppur. Only to transfer MCOP No.21 of 2014 before the Special Subordinate Judge for MCOP cases, Coimbatore to be tried alongwith MCOP No.518 of 2014, the present transfer petition has been filed.

11. The first and second respondents, the parents of the deceased Mahendiran filed a proof of affidavit and the same has been received. Two documents namely salary slip for the month of November 2013 and PF statement of account dated 07.05.2014 of the deceased Mahendiran have been filed before this court and they are marked as Exs.P1 and P2. The claimant has also filed documents such as Ration Card, Legal Heir certificate, Order of the Lok Adalat in MCOP No.256 of 2014, Bank passbook, photographs showing the injuries sustained by her, salary certificate issued by the company of the deceased and photographs of the petitioner showing the nature of injuries and they have been marked as Exs.P3 to P9 respectively, on the side of the petitioner.

12. It is evident from Ex.P8, certificate issued by RYDON Auto Private Limited where the deceased was working, that the last drawn salary of late O.Mahendiran was Rs.16,000/- and he had the benefit of EPF No.TN/CBE/72523/118 and ESI No.5603818045. From the above documents, it is clear that the deceased was earning a sum of Rs.16,000/- per month. As the deceased was aged about 31 years, as per Ex.P8, 50% is added towards future prospects as per the judgment of SARLA VERA and SANTHOSH DEVI cases. Therefore, the monthly income of the deceased is arrived as Rs.24,000/- (Rs.16,000 + 50%). As the

size of the family is three, 1/3 is required to be deducted. Accordingly, the loss of income to the family would be Rs.16,000/- (24,000 - 1/3). As per judgment of Sarla Verma v. DTC, reported in 2009 (2) TN MAC 1 (SC), for the age of 31, the appropriate multiplier would be 16 and the loss of income is calculated as follows -

$$\text{Rs.16,000/-} + 50\% \text{ Less } 1/3 \times 12 \times 16 = \text{Rs.30,72,000/-}$$

13. It is disheartening to note that the petitioner lost her husband within four months of her marriage, that too at the age of 22 years. The amount of mental agony suffered by her, both physically and psychologically is unbearable. The loss of companionship cannot be estimated in terms of money. The widow is not accepted in the society as a good woman. Even during festive occasion, she is treated differently and therefore, social stigma is attached to the lady, who lost her husband. This is the reliability from the father of our nation Mahatma Gandhiji and Rajaram Mohan Roy, who fought for widows remarriage. The Government is also encouraging the remarriage of widows so that they can live peacefully.

14. In view of the above reasons, in an endeavour to compensate the loss of husband, this court awards a sum of Rs.2,00,000/- towards loss of consortium, following the judgment of Rajesh and others vs. Rajbir Singh and others reported in 2013 9 SCC 54 wherein it has been that at least Rs.1,00,000/- has to be awarded towards loss of consortium. Similarly, the parents of the deceased, namely the first and second respondents, in a very reproductive stage lost their son who would have given safety and security to their lives. Therefore, for the loss of love & affection, a sum of Rs.1,00,000/- is awarded to the first and second respondents. Rs.25,000/- is awarded towards funeral expenses, Rs.25,000/- is awarded towards transportation, Rs.75,000/- is awarded towards loss of estate. Thus, a total sum of Rs.34,97,000/-, rounded off to Rs.35,00,000/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit is awarded as compensation, break-up as follows -

Loss of income	...	Rs.30,72,000/-
Loss of consortium	...	Rs. 2,00,000/-
Loss of love & affection	Rs.	1,00,000/-
Funeral expenses	...	Rs. 25,000/-
Transportation	...	Rs. 25,000/-
Loss of estate	...	Rs. 75,000/-

Total	...	Rs. 34,97,000/-
=====		
Rounded off to Rs.35,00,000/-.		

15. Out of the above compensation of Rs.35,00,000/- awarded by this Court, the petitioner is entitled to a sum of Rs.20,00,000/- and the respondents are entitled to a sum of Rs.15,00,000/- each, alongwith proportionate interest and costs. The 4th respondent is directed to transfer the award amount alongwith interest and costs, within six (6) weeks from the date of receipt of a copy of this order, to the respective accounts of the claimants/respondents, as per their share. The 4th respondent is further directed to transfer an amount of Rs.20,00,000/- being the share of the petitioner, alongwith interest and costs to AXIS Bank Account No.916010015008421, Peelamedu Branch, Coimbatore standing in the name of the petitioner. The first and second respondents are directed to give their Bank Accounts to the Insurance company to enable them transfer Rs.15,00,000/- each alongwith interest and costs. Out of Rs.20,00,000/- deposited in the account of the petitioner, she is permitted to withdraw only Rs.10,00,000/- and the balance amount is directed to be deposited in an interest bearing fixed deposit in her name, atleast for a period of ten years, so that permanent income by way of interest would be available to the petitioner.

16. This is a rare and rarest case wherein the petitioner lost her husband within four months of her marriage and she herself got injured very badly and she has to depend upon the creches even for movement. The petitioner was present before this court and only after understanding the status of the petitioner, in a attempt to do complete justice to her, this court, instead of deciding the transfer petition, taken on file the main MACTOPs and decided the matter by awarding a sum of Rs.35,00,000/- as compensation. It is a rarest case and it cannot be treated as a precedent in future.

17. Accordingly, the above transfer petition as well as MCOP No.21 of 2014 pending on the file of MACT, First Additional District Judge, Tiruppur and MCOP No.518 of 2014 pending on the file of Special Sub Court for MCOP cases at Coimbatore are disposed of. No costs.

18. Post the matter for compliance during first week of January 2016.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

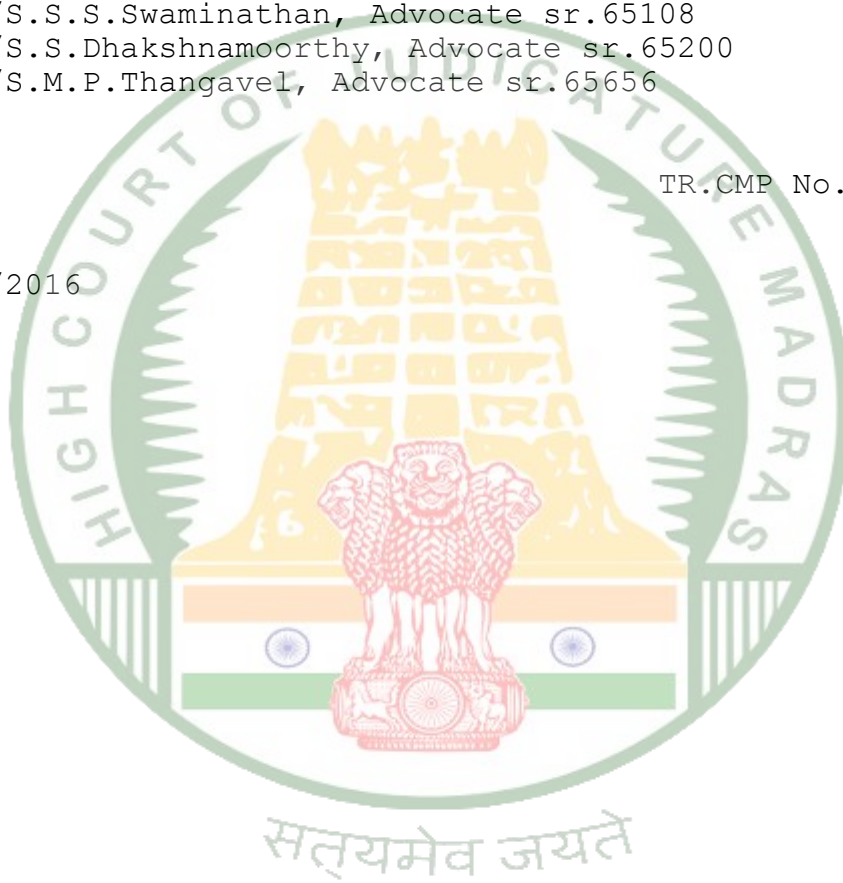
To

1. The Motor Accident Claims Tribunal,
First Additional District Court,
Tiruppur
2. The Motor Accident Claims Tribunal,
Special Sub Court for MCOP cases,
Coimbatore.

+1cc to M/S.S.S.Swaminathan, Advocate sr.65108
+1cc to M/S.S.Dhakshnamoorthy, Advocate sr.65200
+1cc to M/S.M.P.Thangavel, Advocate sr.65656

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