IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.1329 of 2014
and M.P.No.1 of 2014

The Oriental Insurance Co. Ltd.,
No.22-C, Sarada College Road,
Siva Complex, Salem-16. ... Appellant /second respondent

versus

1. Yesodha
2. Govindasamy … 1st and 2nd respondents/ Claimants
3. G.Senthilkumar … 3rd respondent/1st respondent
(R3 remained ex parte before the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 15.07.2013 made in M.C.O.P.No.302 of 2009 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Salem.

For Appellant :Mr.N.Vijayaraghavan
For R1 and R2 :No appearance
(Mrs.Suguna Ravi (Amicus Curiae))

JUDGMENT

"Fathers have a crucial role to play in the cognitive, social and emotional development of their children. An involved father is one who is engaged, available and responsible. He is sensitive and supportive, nurturing and affectionate, and comforting and accepting" - Michael Lamb.

1.1. That is a special and specific role of the father in developing the off-spring. When it is said that father holds the child's hand for a while and holds the heart forever as a provider, protector, professor, playmate and partner, in respect of death of a son, whether the compensation can be declined to the father, just because the father is not shown as legal heir in the legal heir certificate?

1.2. Mother alone is entitled to compensation and not the father, is the finding of the Motor Accident Claims Tribunal, Salem and unfortunately, this finding is not under challenge by the claimants, but, the finding with regard to the liability is under challenge by the Insurance Company.

1.3. Even though the correctness of the proposition that the mother alone is entitled to compensation, is not under challenge, even though the compensation payable is meager, payable not under statutory liability, but, under contractual liability, public record cannot be allowed to carry and incorrect proposition and therefore, it is the duty of the Court to correct the legal position as it is likely to affect the potential, future claims of fathers.

2. One Dhamodaran, who was aged 30 years, owner of Sudharson Solar Systems, Salem, earning a sum of Rs.3,000/- per month, met with an accident on 24.10.2008 and died. In respect of the same, the parents of the deceased filed a claim petition in M.C.O.P.No.302 of 2009 before the Motor Accidents Claims Tribunal (I Additional District Court), Salem, claiming compensation of Rs.7,00,000/-.

2.1. As against the claim of Rs.7,00,000/-, the Tribunal has awarded a sum of Rs.1,00,000/- as compensation as against the Insurance Company. Challenging the liability to pay compensation, the Insurance Company has filed this Appeal.

3. The main contention of the learned counsel appearing for the Appellant /Insurance Company is that the Insurance Company is not liable under Ex.R1-Insurance Policy, as it is a case, where, the victim was the rider of the insured two-wheeler, which is not covered under clause 3 of the Ex.R1-Insurance Policy. In other words, the contention is that the personal accident coverage under Ex.R1-Policy was available only to the owner of the vehicle, in whose name, the registration certificate stands and not to each and every one of the persons, who is driving the vehicle at the time of accident. Hence, the award passed by the Tribunal is unjustifiable.

4. Whether this contention can be accepted or not, is the issue to be decided. In order to decide the same, the terms and conditions of the contract, under which the policy is issued, is relevant.

4.1. A perusal of the award passed by the Tribunal would go to show that the policy alone is available and not the terms and conditions.

4.2. Unless the terms and conditions, under which the Insurance Policy is issued, is produced before this Court, it is not possible to appreciate the contentions raised by the Insurance Company.

4.3. When the question was raised before the learned counsel appearing for the Insurance Company, it is fairly conceded that the terms and conditions of the policy has not been produced before the Tribunal. Therefore, the duty on the part of the Insurance Company is not discharged by filing the terms and conditions of the policy as contemplated under Section 4 of the Insurance Act, 1938. Therefore, the claim made by the Insurance company is not sustainable and the appeal has to be dismissed.

5. The next issue is whether the father can be deprived of the compensation on account of death of his son only on the ground that he is not the person mentioned in the legal heir certificate issued by the Revenue authorities?

5.1. Whether the legal heir certificate issued by the Revenue authorities would be final in determining the legal status of the claimants?.

5.2. The legal heir certificate only recognizes the pre-existing relationship between the deceased and his relatives and it does not confer any title or right upon the persons named in the legal heir certificate. In other words legal heir certificate helps identify the heirs or surviving family members of a deceased person. It serves to establish the relationship of the heirs to the deceased for claims relating to limited field and to limited extent, i.e pension, provident fund, gratuity or other service benefits of Central and State government departments, specifically when the deceased has not selected a nominee. Therefore, just because a person's name is not found in the legal heir certificate that cannot be a ground to decline the grant of compensation.

5.3. What are the basic principles based on which the compensation is awarded to the claimants? Whether they have to be the legal heirs or legal representatives or the dependents or the sufferers?

5.4. What is the provision under the Motor Vehicles Act, 1988, providing for the basis of claiming compensation and whether the phrases 'legal heir' and 'legal representative' are synonymous?.

5.5. The provision providing for compensation under the Motor Vehicles Act, 1988, uses the phrase 'legal representative' and the said provision reads as under:

> "Section 166 - Application for compensation
>
> (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-
>
> (a) by the person who has sustained the injury; or
>
> (b) by the owner of the property; or
>
> (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
>
> (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:
>
> Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.
>
> (2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed: Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.
>
> (4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act."

5.6. What is the meaning of the word 'legal representative'?

The expression 'legal representative' has not been defined in the Motor Vehicles Act, 1988.

Section 2(11) of the Code of Civil Procedure, 1908 defines 'legal representative' as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

5.7. The Tribunal, perhaps, had in mind the status of the father under the Hindu Succession Act, 1956, and his right to get the share in the property of the deceased son, under which, father has been classified as class-II heir. The relevant provision under Hindu Succession Act and the sequence is highlighted for better understanding as under:

"Distribution of property after death - Hindu Male. The testamentary succession (succession by way of Will) is governed by the Indian Succession Act and intestate succession (succession without will) is governed by the Hindu Succession Act. The process of distribution of property after death of a Hindu Male as governed by the Hindu Succession Act, is in the following sequence.

Class I Heirs:-

Hindu Succession Act groups the heirs of a male hindu into four categories and lays down that his/her inheritable property devolves firstly upon the heirs specified in class I, which are as under:-

- Sons
- Daughters
- Widow
- Mother
- Son of a predeceased son
- Daughter of a predeceased son
- Son of a predeceased daughter
- Daughter of a predeceased daughter
- Widow of a predeceased son
- Son of a predeceased son of a predeceased son
- Daughter of a predeceased son of a predeceased son,

- Widow of a predeceased son of a predeceased son
- Son of a predeceased daughter of a predeceased daughter
- Daughter of a deceased daughter of a predeceased daughter
- Daughter of a predeceased son of a predeceased daughter,
- Daughter of a predeceased daughter of predeceased son,

  All these heirs inherit simultaneously and to the exclusion of other heirs. In the absence of any of the heirs in this category, the property devolves upon the enumerated heirs specified in Class II.

Class II Heirs:-

The devolution of Class II Heirs is made in the absence of any heir in Class I and in such a manner that heirs specified in a particular entry share equally. For this purpose, if more than one heir is specified in a single entry, they share the property simultaneously and equally to the exclusion of those specified in subsequent entries. Class II Hiers include:

- Father
- Sons daughter's son
- Sons daughter's daughter,
- Brother
- Sister,
- Daughters son's son
- Daughters son's daughter,
- Daughters daughter's son,
- Daughters daughter's daughter
- Brother's son
- Sister's son
- Brother's daughter,
- Sister's daughter
- Father's father,
- Father's mother,

* Father’s widow
* Brother’s widow
* Father’s brother,
* Father’s sister,
* Mother’s father
* Mother’s mother
* Mother’s brother
* Mother’s sister.

Agnates:-

A person is said to be an agnate of another if the two are related by blood or adoption wholly through males. Agnate relationship does not extend to relationship by marriage and is restricted of relationship by blood. Also agnate does not include widows of lineal descendants of the intestate. Only in the absence of class I and class II heirs, agnates take the property.

Cognates:-

If a Hindu Male passes away without a Will and has no Class I or Class II heirs or Agnates, then the succession would be through Cognates. Cognates are ones who are related to the intestate by blood or adoption but not wholly through males. Thus mother’s brother’s son and brother’s daughter’s son are cognates, eligible for heirship.”

5.8. This intestate succession has nothing to do with the entitlement to compensation, when a claim is made in respect of death arising out of the accident. The principle of compensation is based on reparation; what is lost is sought to be compensated so far as money can.

5.9. Originally, dependency had been considered as a criteria for awarding compensation, but dependency of a legal heir is not the "be all end all" criteria for claiming compensation.

5.10. Subsequently, the grant of compensation was based on the degree of dependency and the capacity of the deceased to earn.

5.11. Still later, the Honourable Supreme Court held that even if there was no dependency, there is a loss to the estate and a person who is a legal representative but not dependent can yet be a beneficiary of the estate.

5.12. In Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and another reported in 1987 ACJ 561, the Gujarat High Court held that all the Legal heirs and the Legal Representatives of the deceased can maintain a claim petition under Section 110-A (now under Section 166(1)) of the Motor Vehicles Act and consequently, awarded compensation to the nephews of the of the deceased.

5.13. Interpreting Section 110-A (now amended as Section 166 (1)), vis-a-vis, a corresponding provision in the Fatal Accidents Act, 1855, the Apex Court held that, "These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 was new in its species, new in its quality, new in its principles, in every way new, the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies".

5.14. Duty of a son to his parents is to get name and fame to his parents and make them proud that they have given birth a good human being to the society; duty towards the parents is to take care, if the parents be with them, in their sickness, listen to them when they talk, talk to them everyday away of home and of course, love them.

6. From the above discussions, it is clear that a father, who is a sufferer on account of a) loss of son in terms of loss of love and affection; b) loss of support; c) loss of money and d) loss to estate, is also entitled to compensation along with the mother and therefore, the finding that the father is not entitled to compensation is liable to be set aside and it is set aside accordingly.

6.1. In fact, the finding that the father is not entitled to compensation should have been more hurting than the death itself.

7. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 15.07.2013 passed in M.C.O.P.No.302 of 2009 by the Motor Accidents Claims Tribunal, I Additional District Court, Salem, while modifying the entitlement to the claimants to the compensation. The award is modified directing the apportionment of compensation between both the claimants equally.

8. The Insurance Company is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit (excluding the period of dismissal for default, if any), less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, both the father and the mother of the deceased are permitted to withdraw the award amount. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
(I Additional District Court),
Salem.

+1cc to Mr.N.Vijayaraghavan, Advocate Sr.730

C.M.A.No.1329 of 2014

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