IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:01.06.2017
CORAM:
THE HONOURABLE Dr. JUSTICE S.VIMALA
C.M.A.Nos.2591 and 1795 of 2016

C.M.A.No.2591 of 2016:

1. M.Kavitha
2. S.Sathiya
3. M.Menaka ... Appellants/Petitioners

versus

1. G.Murugan
2. P.Nachimuthu
3. United India Insurance Company Ltd.
No.1170, Mettur Road,
2nd Floor, Muthiah Complex,
Erode - 638 011. … Respondents/Respondents
(RR1 &R2-exparte before Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 10.08.2011 made in M.C.O.P.No.105 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Bhavani.

For Appellant : M/s.Ma.Pa.Thangavel
For Respondent No.3 : Mr.T.Ravichandran

RR1 & R2 : Exparte

C.M.A.No.1795 of 2016

1. M.Kavitha
2. S.Sathiya
3. M.Menaka ... Appellants/Petitioners

versus

1. G.Murugan
2. P.Nachimuthu
3. United India Insurance Company Ltd.
No.1170, Mettur Road,
2nd Floor, Muthiah Complex,
Erode - 638 011. … Respondents
(RR1 & R2 remained exparte before the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 23.05.2011 made in M.C.O.P.No.134 of 2009 on the file of the Motor Accident Claims Tribunal, Additional District Court, (Fast Track Court-IV), Bhavani.

For Appellant : M/s.Ma.Pa.Thangavel
For Respondent No.3 : Mr.T.Ravichandran
RR1 & R2 : Exparte before Tribunal

COMMON JUDGMENT

When the right to claim compensation depends upon the right to entitlement and when a claim is made by the married daughters and when they are not considered as dependents upon the deceased (financially):

(a) whether claim for compensation can be declined on the ground that they are not the Dependants;

(b) Whether the compensation should be awarded / can be awarded compensation under the statutory liability; and

(c) whether the compensation to be awarded cannot be less than the compensation payable under statutory Liability ?

These are the issues arising for consideration in these Appeals.

2. Claim Petition in M.C.O.P.No.134 of 2009 has been filed by M.Kavitha, S.Sathiya and M.Menaka (aged 28, 27 and 24 years respectively), claiming compensation of Rs.20,00,000/- caused on account of death of their father, Murugesan, aged 50 years, who was a Power Loom owner, earning a sum of Rs.13,000/- p.m.

2.1. The Subordinate Judge, Bhavani, who inquired the claim, awarded a sum of Rs.55,000/- along with interest at 7.5% p.a. from the date of petition till the date of deposit.

2.2. The claim has been awarded on the ground that the claimants are entitled to a sum of Rs.50,000/- under Section 140 of the Motor Vehicles Act, on the basis of “No fault liability” and they are entitled to a sum of Rs.5,000/- towards cremation expenses and the total being Rs.55,000/-.

2.3. There was a finding that the accident took place only on account of rash and negligent driving on the part of the driver of S.P.M.Bus, bearing Reg. No.TN34D 5699; the deceased Murugesan, at the time of accident, was driving the Motor Cycle bearing Reg. No.TN36K 6698.

3. Contention was taken by the tort-feasor that the claimants are not the dependents upon the deceased, therefore, they are entitled to maintain the application only under Section

140 of the Motor Vehicles Act and not under Section 166 of the Motor Vehicles Act and in support of the contention, the decision reported in 2007 AIR 1474 : 2007 (4) SCR 590 : 2007 (10) SCC 643 : 2007 (5) JT 78 : 2007 (5)SCALE 193 : 2007 SAR (Civil) 419 (SC) (Manjuri Bera vs. Oriental Insurance Co. Ltd.) was relied upon.

4. The claim petition in M.C.O.P.No.105 of 2005 has been filed by the three daughters of the deceased, in respect of death of their mother Pethyammal, aged 46 years, who was assisting the running of the Power Loom Factory, having monthly income of Rs.10,000/-p.m. The Tribunal wanted to quantify the compensation, fixing monthly income at Rs.4,500/- per month, adopting multiplier of '13' and deducting 1/3rd towards personal expenses, but, was driven to give a finding that the claimants are entitled to compensation on the basis of "No Fault Liability" at Rs.50,000/- and Rs.2,500/- towards funeral expenses, Rs.2,500/- towards loss of estate and Rs.5,000/- towards loss of love and affection. The total compensation was at Rs.60,000/-.

5. The comparative chart, with reference to the two claims made by the three daughters, in respect of death of their father and mother, respectively, are:

Claim in respect of death of:	Claim Petition No.	Appeal No.	Award by the Court & Date	Head of Award.
Father	M.C.O.P.No. 134 of 2009	C.M.A.No. 1795 of 2016	Additional District Judge, Bhavani - 23.05.2011	No fault liability - Rs.50,000/-; and Cremation expenses - Rs.5,000/- (Total - Rs.55,000/-)
Mother	M.C.O.P.No. 105 of 2009	C.M.A.No. 2591 of 2016	Sub Court, Bhavani - 10.08.2011	No fault liability - Rs.50,000/-; Funeral expenses - Rs.2,500/-; loss to estate - Rs.2,500/-; Loss of love and affection - Rs.5,000/- (Total - Rs.60,000/-)

6. Challenging the quantum of compensation in both the cases, the claimants are before this Court in C.M.A.No.1795 of 2016 (M.C.O.P.No.134 of 2009) and 2591 of 2016 (M.C.O.P.No.105 of 2009).

7. The learned counsel for the respondent would submit that the awards passed by the Claims Tribunal, in both the cases, are in terms of the decision of the Hon'ble Apex Court reported in Manjuri Bera, cited supra, and therefore, awards passed are reasonable and they do not require any interference.

7.1. The learned counsel appearing for the appellants would submit that the Tribunal has committed grave mistake in understanding the foundational principle, upon which the Hon'ble Supreme Court awarded compensation in Manjuri Bera's case and therefore, certainly it requires interference.

7.2. In order to appreciate the contentions raised, it is necessary to look into the basic principles considered and dictum laid down in the Manjuri Bera's case.

8. The Hon'ble Apex Court considered the definition of the phrase 'legal representative' and has held that the legal representative is one, who suffers on account of death of a person, due to a motor vehicle accident and need not necessarily be wife, husband, parent and child. The relevant paragraph reads thus:-

> "10. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique [1989]2SCR810 the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr. [1987]3SCR404 a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child."

8.1. The crux of the judgment is that, even if there is no loss of dependency, the claimant, if he or she is a legal representative, will be entitled to compensation, the quantum of which shall not be less than the liability flowing from Section 140 of the Act. Therefore, it does not mean that when there is evidence available to show the extent of contribution of the deceased to the estate of the deceased, the beneficiaries of the estate of the deceased can claim compensation, after adducing necessary proof.

9. Coming to the documentary evidence, with regard to the occupation, the Power Loom Registration Certificate issued under the Textiles (Control) Order 1986, makes a reference to the application dated 23.09.1986, which shows that the deceased Murugesan is the Owner of the Powerloom. This Certificate has been issued in cancellation of original permit dated 15.03.1983 and it has been issued for six looms.

9.1. The Certificate of Tax Deduction has been filed for the period from April 2006 to March 2007, from which, it is evident that the total tax deduction is Rs.36,915/-. The Ministry of Commerce, Government of India, has issued certificate of Importer-Exporter Code also stands in the name of the deceased Murugesan.

9.2. The Power Loom Development and Export Promotion Council has issued Registration-cum-Membership Certificate. The acknowledgment issued by the Income Tax Department (Ex.P9) would show that the gross total income for the Assessment Year 2007-08 was Rs.1,36,867/- and after deduction, the total income was Rs.1,16,867/-.

9.3. At the time when the accident took place, the first and second claimants had married and the third claimant had remained unmarried. At the time of passing of the award, the third claimant also got married.

9.4. From the documentary evidence adduced, it is evident that the earnings of the deceased father had been to the extent of paying Income Tax.

9.5. When the wife is a Home-maker, she would have contributed her own Labour to the Power Loom Industry.

9.6. In the evidence of Menaka, she has stated that she was studying Medical College, when her father and mother died. Thereafter she got married and her husband is also a Doctor, running a private hospital. The second claimant's husband is running a Pharmacy.

Nature and extent of dependency of employed / married daughters:

10. Preparing a girl for the marriage and for integration of the daughter with the new family in which the daughter enters after marriage are the prime duty of the parents. This critical help was not available to the third appellant. The dependency of a daughter need not always be financial dependency, but it can also be any other dependency like physical dependency, moral dependency, emotional dependency, psychological dependency, etc., The law recognizes not only parameters which can be arithmatically calculated, but also other parameters which can

be notionally estimated. Say for example, loss of enjoyment of amenities and loss of expectation of life, for which there is no numerical calculations readily available.

10.1. As the women take on the role of working professional in addition to their traditional role of the homemaker, they are under great pressure to balance their work and personal lives.

10.2. Work and family are the two most important domains in a person's life and their balance would compel the married / employed women to seek assistance from their parents. Despite women taking varied official roles, womenfolk continues to be the primary provider for domestic and childcare responsibilities.

10.3. Grandparents, the deceased persons (if the claimants beget children in their married life) would have played an important role in takingup the responsibility of taking care of their grandchildren. Grand parents are the major providers of child care for preschool children, particularly for babies and toddlers, when both their parents are in the workforce.

10.4. In this case also, so far as the third appellant is concerned, both are employed.

10.5. Grandparents also help parents with school-age children by picking them up from school, and by caring for them during school vacations.

10.6. In some cases, the grandparents have to take up the role of re-parenting.

11. Moreover, when there is a liability for the married daughters to maintain the parents under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, then, there is no reason as to why, they should be deprived of the benefits emanating on account of death of their parents.

12. Then coming to the quantum of compensation, so far as the father is concerned, he is an income tax assessee and there is no difficulty in assessing the quantum of loss which should have gone to the estate.

12.1. So far as the mother is concerned, the services which she should have rendered in the Power loom operation to her husband, house hold responsibilities from which she should have saved the time of her husband and other services which she should have rendered to the married daughters, have to be calculated towards loss to estate.

12.2. There is no distinction in making a claim for compensation either as a direct receiver of monetary benefit or indirect receiver of the services rendered by the parents. Of course, the quantum may vary depending upon the extent of monetary value received or the nature of services enjoyed.

12.3. As per the acknowledgment issued by the Income Tax Department (Ex.P9), the gross total income for the Assessment Year 2007-08 was Rs.1,36,867/- and after deduction, the total income was Rs.1,16,867/-. Hence, it can be safely concluded that the monthly income of the deceased would have been around Rs.10,000/-. The dependency on the income of the deceased father would be Rs.6,60,000/- (Rs.10,000/- x 12 x 11 (-) 50% (deduction towards personal expenses)).

12.4. Further, towards loss of love and affection, cremation expenses and mental shock on account of losing the parents at the same time, compensation have to be awarded and the break up details of the total amount of compensation awarded read thus:-

Loss of dependency	-	Rs.6,60,000/-
loss of love and affection	-	Rs.1,50,000/-
Cremation expenses	-	Rs. 25,000/-
Mental shock on account of losing the parents at the same time	-	Rs. 75,000/-
Total	-	Rs.9,10,000/-

13. Though it is claimed that the deceased mother, Pethyammal, aged 46 years, was assisting the running of the Power Loom Factory and earning a monthly income of Rs.10,000/- p.m., there is no proof adduced. But the deceased mother would have definitely contributed to the functioning of the power loom and would have assisted the married daughters, in many ways possibly. Hence, value of the services of the deceased mother is estimated at the moderate rate of Rs.6,000/-, per month. If the same is taken, the loss of dependency to the claimants would be Rs.4,68,000/- (Rs.6,000/- x 12 x 13 (-) 1/2 (deduction towards personal expenses)).

13.1. Further, towards loss of love and affection, cremation expenses and mental shock on account of losing the parents, at the same time, compensation have to be awarded and the break-up details of the total amount of compensation awarded read thus:-

Loss of dependency (in terms of

loss of services)	-	Rs.4,68,000/-
loss of love and affection	-	Rs.2,25,000/-
Cremation expenses	-	Rs. 25,000/-
Mental shock on account of losing the parents at the same time	-	Rs.1,00,000/-
Total	-	Rs.8,18,000/-

13.2. In view of the above, the Judgments and Decrees, dated 10.08.2011 and 23.05.2011, made in M.C.O.P.Nos.105 of 2009 and 134 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Bhavani and Motor Accident Claims Tribunal, Additional District Court, (Fast Track Court-IV), Bhavani, are set-aside and the Civil Miscellaneous Appeals are partly-allowed. No costs. Consequently, the connected CMP is closed.

13.3. The amount of compensation, as ordered by this Court, i.e., Rs.9,10,000/- and Rs.8,18,000/-, (along with interest at 7.5% per annum from the date of petition till the date of deposit) shall be deposited by the Insurance company / third respondent herein, less the amount already deposited (also less the period of condone delay in filing / representing the Appeal, if any), within a period of four weeks from the date of receipt of a copy of this judgment.

13.4. On such deposit being made, the claimants / daughters / appellants are permitted to withdraw the amount awarded, in equal proportion, along with proportionate interest. The deficit court fee shall be paid by the claimants before receiving the award amount.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

srk

To

1.The Subordinate Judge
Motor Accidents Claims Tribunal
Bhavani
Erode District

2.The Additional District Judge
Motor Accidents Claims Tribunal
Fast Track Court No IV
Bhavani Erode District

+2 ccs to Mr.Ma.P.Thangavel Advocate sr 39345 & 39346
+2 ccs to Mr.T.Ravichandran Advocate sr 39360,39361

C.M.A.Nos.2591 and 1795 of 2016

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