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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.06.2017

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THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.2040 of 2017
CMA (SR No.10304 of 2009)
and
CMP No.10961 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
(VPM Division - II), Vellore - 632 008.

... Appellant/2nd Respondent

Versus

1. Lakshmi
2. Padma
3. Nagammal
4. Selvi Kanniyammal
5.P.Sekaran (Given up) ... Respondents/petitioners 1 to 4
& 1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award made in MCOP No.42 of 2004, dated 21.10.2008 on the file of the Motor Vehicles Accident Claims Tribunal and District Judge Fast Track Court No.II, Kancheepuram.

For appellant : Mr.K.J.Sivakumar

J U D G M E N T

The deceased, Chinnaponnu, aged 55 years, an agricultural coolie, earning a sum of Rs.3,000/- p.m., died in an accident that took place on 11.06.2002. The claimants 1 to 4, viz., the daughters of the deceased Chinnaponnu have filed the claim petition.

2. The Tribunal, considering the oral and documentary evidence, quantified the compensation in a sum of Rs.2,28,500/- as against the claim made for a sum of Rs.3,50,000/-. The appellant/Transport Corporation, aggrieved over the compensation awarded has filed the present appeal.



3. Though the age of the deceased was said to be 55 years on the date of the accident, however, the Tribunal fixed the age of the deceased at 58 based on the postmortem certificate and fixing the monthly income at Rs.3,500/-, deducting 1/3rd towards the personal expenses of the deceased, adopting multiplier of '8' quantified the loss of dependency at Rs.2,24,000/- (Rs.2334 x 12 x 8 = Rs.2,24,064/-). That apart, compensation at Rs.2,500/- has been awarded towards loss of estate. In all, an amount of Rs.2,26,500/- has been awarded. However, an arithmetical error had crept in the order, wherein instead of awarding Rs.2,26,500/- as compensation, an amount of Rs.2,28,500/- has been awarded. However, this Court finds that the same need not be interfered with, as no amount has been awarded towards funeral expenses. Therefore, the excess amount of Rs.2,000/- is awarded towards funeral expenses.

4. The main contention of the learned counsel for the appellant is that the claimants, being the married daughters of the deceased, cannot be termed as dependents and, therefore, the claim laid by them is unsustainable, as there was no loss of earning to the family, as the claimants, being married to a different family and, therefore, cannot be termed as dependents. Further, it is the submission of the learned counsel for the appellant that the compensation awarded is also excessive and unreasonable and, therefore, the same is liable to be interfered with.

5. The above contention advanced by the learned counsel for the appellant is unsustainable. The sine qua non for claiming compensation is that the claimants should be legal representatives. The Motor Vehicles Act gives right to the legal representatives also to file the claim petition and not to the dependents alone. For better clarity, the relevant provision reads as under :

"166. Application for compensation.

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



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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.

6. Section 2 (11) of CPC 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. Even if a person is not a legal heir, if he is entitled to inherit the property of the deceased, he can represent the estate of the deceased, and thus he becomes the legal representative.

7. It is settled position of law that a legal representative is one who suffers on account of death of a person in a motor vehicle accident and need not necessarily be a wife, husband, parent or a child. Therefore, it cannot be contended that the married daughters will not suffer any loss on account of the death of their mother. As the legal representatives of the deceased, the married daughters are well within their rights to file the claim petition. Moreover, the married daughters are also fully liable to maintain their parents under Maintenance and Welfare of Parents and Senior Citizens Act. Therefore, for all purposes, the married daughters are entitled to file the claim petition.

8. From the perspective of human rights, equality, dignity and gender justice also it is necessary that the rights of married daughters should be recognized. It is appropriate to quote the Judgment of the Hon'ble Supreme Court in Valsamma Paul (Mrs) v. Cochin University and others [AIR 1996 SCC 1011] :-

"26. Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedoms have been reiterated in the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and an indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth - cultural, social and economical. All forms of discrimination on



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grounds of gender is violative of fundamental freedoms and human rights. Convention for Elimination of all forms of Discrimination Against Women (for short, "CEDAW") was ratified by the UNO on 18-12-1979 and the Government of India had ratified as an active participant on 19-6-1993 acceded to CEDAW and reiterated that discrimination against women violates the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; it hampers the growth of the personality from society and family, making more difficult for the full development of potentialities of women in the service of the respective countries and of humanity.

9. For the reasons aforesaid, the contention advanced that the married daughters cannot be said to be dependents of the deceased is wholly unsustainable and, accordingly, the said contention is rejected. Insofar as the quantum of compensation is concerned, as detailed above, the award passed under the various heads are conservative and cannot be said to be unreasonable or excessive. Therefore, no interference is called for with the award passed by the Tribunal.

10. In the result, the Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. Consequently, connected Miscellaneous Petition is closed.

11. The Appellant/Transport Corporation is directed to deposit the entire award amount, along with interest at the rate of 7.5% per annum and costs as determined by the Tribunal, less the amount, if any, already deposited, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimants through RTGS within a period of two weeks thereafter, as per the apportionment fixed by the Tribunal.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

vsi2/GLN



To

1) The Motor Vehicles Accident Claims Tribunal and
District Judge Fast Track Court No.II, Kancheepuram.

2. The Section Officer, VR Section,
High Court, Madras.

C.M.A. No.2040 of 2017

SAI (CO)
GN(28/02/2018)