

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A.No.982 OF 2004

JUDGMENT:

The present appeal, under Section 173 of the Motor Vehicles Act, 1988, is preferred, aggrieved over the order and decree, dated 13.10.2003, passed in M.V.O.P.No.49 of 1995 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Guntur, rejecting the claim of the appellants – claimants laid under Section 166 of the Motor Vehicles Act, 1988.

2. Heard Sri K. Subba Rao, learned counsel for the appellants, Sri R. Manmadha Reddy, learned counsel for respondent No.1, Sri R. Prabhakar, learned counsel for respondent No.2 and Sri R. Venkat Rao, learned counsel for respondent No.3.

3. A perusal of the order under challenge would show that a common order was passed on 13.10.2003 by the learned Chairman, Motor Accidents Claims Tribunal, Guntur, in M.V.O.P.Nos.35, 43 and 49 of 1995. The present appeal is directed against the rejection order passed in M.V.O.P.No.49 of 1995. The deceased in M.V.O.P.No.49 of 1995 is no other than the daughter-in-law of the appellants – claimants.

4. It is not in dispute that all the three claims arise out of three deaths. The appellants' son, daughter-in-law and grand daughter, while travelling in a car bearing registration No.ABR-5569 from Guntur to Chirala, as the son of appellants, who was practising as an orthopaedician, had to conduct an operation, an R.T.C. bus coming in

opposite direction driven at high speed in a rash and negligent manner, hit the car, due to which all the three died on the spot.

5. Originally, M.V.O.P.Nos.35 and 49 of 1995 were dismissed and M.V.O.P.No.43 of 1995 was partly allowed by the Tribunal and the matters were carried to this Court and this Court, making certain observations, remitted the matters to the Tribunal for disposal afresh with a direction to the parties to lead further evidence in addition to the evidence already recorded. That is how the present common order came to be passed.

6. The learned Chairman, by common order, dated 13.10.2003, allowed M.V.O.P.Nos.35 and 43 of 1995, in which, the son and grand daughter of the appellants were the deceased, granted an amount of Rs.25,000/- as compensation as against Rs.50,000/-, and an amount of Rs.2,55,500/- as against Rs.6,30,000/-, with interest at 12% per annum from the date of petition till remand and thereafter, at the rate of 9% per annum, while fixing the liability in the ratio of 3:1 between respondent No.1 – corporation on one side and respondent Nos.2 and 3, who are the owner and insurer of the car, respectively, on the other, but, did not accede to the claim relating to the daughter-in-law on the main ground that the appellants cannot be construed as dependants of their daughter-in-law and accordingly, rejected the request made in M.V.O.P.No.49 of 1995, which is under challenge in the present appeal.

7. During the course of arguments, learned counsel for the appellants would contend that the appellants being legal representatives, they can maintain the claim petition. The dependency or otherwise can be examined by making a thorough probe into the facts and circumstances of the case and basing on the evidence let in by the appellants. Learned counsel for the appellants, in support of his submissions, placed reliance on a decision rendered by a Full Bench of this Court in **Dr. Gangaraju Sowmini v. Alavala Sudhakar Reddy and another**¹. Instead of referring to the fact situation occurring therein and the point involved, it would suffice to refer to what has been observed by the Honourable Full Bench in paragraph Nos.15 to 17 thus:

“15. Further, in the judgment in the case of *Kannamma v. Deputy General Manager* (10) 1990 (1) An.W.R.722 = 1991 ACJ 707, a Full Bench of Karnataka High Court has considered the right of legal representatives to come on record and continue the proceedings initiated by the deceased claimant. In the aforesaid judgment, the Full Bench, while considering the provision under Section 110-A of the Motor Vehicles Act, 1939 read with the provision under Section 306 of the Indian Succession Act, 1925, has held that if the death is due to the injuries suffered in the accident, legal representatives can prosecute the petition only relating to the loss to the estate of the deceased.

16. In view of the clear and unambiguous language under Section 166 of the Motor Vehicles Act, it is clear that application can be made either by the injured or the legal representatives of the deceased. Though ‘legal representative’ is not defined under

¹ 2016 (2) ALT 306 (F.B.)

the provisions of the Motor Vehicles Act, 1988, from Rule 2(g) of the A.P.Motor Vehicles Rules, 1989, it is clear that the definition of 'legal representative' is given same meaning as defined under Section 2(11) of the Code of Civil Procedure. In view of the judgment of Hon'ble Supreme Court in *Manjuri Bera's* case (8 supra), it is clear that the compensation which is payable on account of no fault liability will form part of the estate of deceased. In that view of the matter, there is no basis for contending that the application is to be filed only by the dependants. As we have held that dependency is a matter to be taken into consideration for award of compensation and merely because one is not dependant, that by itself, is no ground for not entertaining any claim made for grant of compensation under the Motor Vehicles Act. In view of the clear language under Section 166 of the Act and in view of the judgment of Hon'ble Supreme Court in *Manjuri Bera's* case (8 supra), wherein, it is held that the compensation to be awarded under Section 140 of the Motor Vehicles Act will form part of the estate of deceased, and further, as the Act also provides for compensation on other conventional heads, we are of the view that the non-dependant also can lay a claim by filing application under Section 166 of the Act. It is also to be noticed that situations may arise, where, one may have suffered injuries initially but ultimately after filing a claim, may have succumbed to such injuries also. In such an event, lot of amount would be spent towards hospitalization etc., and as already discussed in the judgment of Hon'ble Supreme Court in *Montford Brothers'* case (5 supra), it is common in the Indian society, where, the members of the family who are not even dependant also can extend their support monetarily and otherwise to the victims of accidents to meet the immediate expenditure for hospitalization etc., in such cases, unless the legal representatives are allowed to continue the proceedings initiated by the person who succumbs to injuries subsequently, such claims will be defeated and that will also defeat the very

object and intentment of the Act. Any such measure would be wholly inequitable and unjust. Plainly, that would never be intent of any piece of legislation. For the aforesaid reasons and in view of the language under Section 166 of the Motor Vehicles Act, 1988 r/w. Rule 2(g) of the A.P. Motor Vehicles Rules, 1989, we are of the view that even the legal representatives who are non-dependants can also lay a claim for payment of compensation by making application under Section 166 of the Motor Vehicles Act.

17. Accordingly, we answer the reference, holding that a non-dependant heir of the deceased who died in a motor accident is entitled to lay a claim for compensation under Section 166 of the Motor Vehicles Act, 1988 where there is no other dependant legal heir for claiming compensation. Thus, we approve the view taken by the Division Bench of this Court in *Vanguard Insurance Co. Ltd's* case (2 supra) and hold that the view taken by the Division Bench in *Oriental Insurance Co. Ltd's* case (1 supra), is not correct.”

8. Now the question is whether the appellants are entitled to any amount. If so, to what amount?

9. It is no doubt true that the deceased is daughter-in-law of the appellants. The appellants, of course, lost their son, grand daughter and daughter-in-law, the whole family as such. When the appellants took the deceased as daughter-in-law into their family, it cannot be said that dependency ceases when her death occurs. Therefore, keeping in view, the legal principle laid down by the Honourable Full Bench of this Court, it is to be held that the appellants are entitled to compensation for the death of their daughter-in-law. Admittedly, the parents of deceased

daughter-in-law are not parties to the present lis. It is not brought to the notice of this Court that they have moved any such claim petition making a claim adverse to the claim made herein. In such an event, the compensation to which the appellants are entitled on account of death of their daughter-in-law requires to be determined. The age of the daughter-in-law is not occurring in the impugned order. There is no reference to the details. Even holding that that she was rendering domestic services to the appellants and her family, who are no more now, certainly, a lumpsum amount can be granted. The claim made herein was for award of Rs.3,20,000/-. When a child, below the age of 15 years, dies, a sum of Rs.1,50,000/- is permitted to be awarded, in view of the ruling of the Honourable Supreme Court in **Puttamma and others v. K.L. Narayana Reddy and another**². In such an event, without referring to structural formula, a sum of Rs.2,50,000/- can be awarded to the appellants, which would be just and fair compensation.

10. Accordingly, the appeal is allowed in part awarding Rs.2,50,000/- towards compensation with interest at 7.5% per annum from the date of filing petition till the date of realisation, without disturbing the liability in the ratio of 3:1 between the corporation on one side and the owner and insurer of the car, on the other.

11. The compensation amount now awarded shall be apportioned equally among the appellants.

² 2014 ACJ 526 (SC)

12. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

October 10, 2017.
MD

