



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.672 of 2001

1.A.Manickam

2.Lakshmi

....Appellants/Petitioners

Versus

1.Kuppayyee Ammal

2.M/s.United India Insurance Company,
Salem - 6.

3.Arayer

4.Minor Gowri

5.Minor Nandhini

6.Minor Karthik

(Minor 4,5 and 6 are represented herein
by their mother and natural guardian
Arayer, the third respondent herein)

....Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 12.01.2001 made in M.C.O.P.No.182 of 1997 on the file of the Motor Accident Claims Tribunal, Salem.

For Appellants : Mr.C.Ravichandran
For R2 : Mr.T.Ravichandran
For R3 to R6 : Mr.D.Shivakumaran

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 12.01.2001 made in M.C.O.P.No.182 of 1997 on the file of the Motor Accident Claims Tribunal, Salem.

2. The brief facts of the case are as follows:-

On 05.08.1996 at about 6.15 p.m., while the deceased Murugesan was trying to get into the bus bearing Registration No.TN-27-D-4888 near Sankari-Trichy Junction had fallen from the bus and met with accident and died. The claim application has been filed by the parents of Murugesan claiming compensation of Rs.3,00,000/-. There are two claim applications filed for the death of deceased Murugesan, one filed by the parents of the deceased in MCOP No.182 of 1997 and the other claim application in MCOP.No.201 of 1997 by the wife and children of the deceased.

3. The Tribunal upon analysing the evidence and documents in both the claim applications, has awarded a sum of



Rs.3,00,000/- as compensation to the claimants/parents, wife and children in MCOP No.182 of 1997 and dismissed the another claim petition filed by the wife and children of the deceased in MCOP No.201 of 1997 since the compensation is awarded to them in MCOP No.182 of 1997. Aggrieved against the said award, the appellants who are the parents of the deceased Murugesan had preferred this appeal to set aside the compensation awarded to the wife and children of the deceased.

4. In the grounds of appeal, the appellant has stated that the tribunal has committed an error in observing that the 3rd respondent is the wife of the victim and also the minor respondents 4 to 6 are children of the deceased Murugesan. The other grievance raised in the appeal is that without filing counter statement in I.A.No.327 of 2000 seeking impleadment of the respondents 3 to 6, the claim application in MCOP No.182 of 1997 filed by the appellants came to be automatically admitted. The main grievance raised in the appeal by the appellants/parents is that the tribunal has not considered the fact and no evidence was placed before the tribunal for allowing the application to implead the respondents 3 to 6. In the absence of any other related documents and evidence, the tribunal has come to the conclusion that the 3rd respondent is the wife of the deceased and 4 to 6 are their children. Hence, the appellants/parents of the deceased have preferred this appeal to set aside the award and apportionment passed as against the respondents 3 to 6.

5. Heard both sides and perused the materials available on record.

6. It is argued by the appellants that the deceased Murugesan was a bachelor at the time of accident and the respondent 3 is not a legally wedded wife and the respondents 4 to 6 are not the children born to the deceased Murugesan and 3rd respondent. The impleading petition was filed by the respondents 3 to 6 and no counter statement was filed and the appellants herein were not given an opportunity to verify the merits in the impleading petition and because of the non filing of the counter, the said petition was allowed.

7. On perusal of the Ex.P3-Voter List produced by the appellant to prove that the deceased is the son of the appellants, it is seen that, it is just a sheet without any endorsement of the concerned officers, in which it has been mentioned the name of the deceased as Murugesan son of Manickam. Further, Ex.R6- Voter List has been filed by the respondents to prove that 3rd respondent is the wife of the deceased Murugesan. It is brought to the notice of this Court that the legal heirs certificate issued by the Tahsildar, Salem



to the 3rd respondent was cancelled after full enquiry. It is also argued by the appellant that the tribunal has erred in relying upon the birth certificate of the respondents 4 to 6, which has got no merits. Therefore, it is argued by the appellants that the finding of the tribunal with regard to the fact that the respondents 3 to 6 are legal heirs of the deceased Murugesan is not justified, since the legal heirship certificate issued to the 3rd respondent itself has been cancelled by the RDO on merits.

7. In this context, the learned counsel for the appellants has relied upon the judgment of this Court reported in 1993 (2) MLJ (17) in the case of Kamakshi Vs. Minor Ramalingam @ Munusami and another in S.A. No. 920 of 1982, Dated 12.01.1993. The relevant portion is extracted hereunder:

"9. So, from the very evidence of P.Ws.1 and 2, it can be safely concluded that the factum of the alleged marriage between Singarammal and the 1st defendant cannot be said to have been established by the plaintiff, and the finding of the trial court in this regard, is correct. Further, the abovesaid Ex.A-2 birth extract of the plaintiff cannot also be relied on to prove the parentage of the plaintiff, or in other words, to prove the factum of marriage between the 1st defendant and Singarammal. It has also been held so in Nagayasami Naidu v. Kochadai Naidu 81 L.W. 436 : A.I.R. 1969 Mad. 329 (D.B.), while dealing with the scope of Section 35 of the Evidence Act, Rajambal v. Veeramuthu Udayar, 99 L.W.175 (D.B.), has also held likewise. It relied on an earlier decision in Nagayasami Naidu v. Kochadai Naidu, which observed: "Under Section 35 of the Evidence Act (I of 1872), it is only the entry made by a public servant in the discharge of his official duties that is admissible as a relevant fact. Other particulars not strictly covered by the entries are not admissible under Section 35 of the Evidence Act."

8. On the other hand, the learned counsel for the respondents submitted that as per Exhibit A4, further proceeding as against the order passed by the Tahsildar, Salem is pending. Since, the legal heirship certificate issued by the concerned authorities was cancelled vide Order dated 17.11.1998 (Ex.A4), the point which has to be decided is as to whether the claimants 3 to 6 are the legal heirs of the deceased Murugesan or not. As per the available records, it is clear that the legal heirship certificate issued by the Tahsildar, Salem was cancelled by the RDO, Salem which is marked as Ex.A4 and the



respondents also stated that against the order of cancellation, a fresh enquiry has been ordered to be conducted and the same is still pending.

9. It is seen that though the said enquiry was ordered in the year 1998, the respondents/claimants 3 to 6, are yet to file the final order. By considering the facts and circumstances of the case, the tribunal has passed an award holding that the respondents 3 to 6 are the legal heirs of the deceased Murugesan and awarded compensation to them. Further, it is seen that the respondents 3 to 6 are the legal heirs of the deceased by their amendment petition itself.

10. Though the tribunal has awarded compensation to the respondents 3 to 6, this Court is of the view that it would not be proper to permit them to withdraw the amount, since the issue with regard to the claiming of legal heirship by the respondents 3 to 6 is yet to be decided by the concerned officials.

11. It is represented by the Insurance Company that the entire award amount has already been deposited before the tribunal. Therefore, the tribunal is directed to disburse the award amount to the appellants herein as per the apportionment, who are the parents of the deceased Murugesan with interest and costs, within period of one week from the date of receipt of a copy of this Order. The tribunal is further directed to keep it pending the amount apportioned to the respondents 3 to 6 in the Court deposit till the final order is passed by the concerned RDO. It is made clear that the awarding of sum apportioned to the respondents 3 to 6 will be decided only after producing the legal heirs certificate before this Court.

11. In view of the same the Civil Miscellaneous Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed, if any.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

lpp



To

1. The I Additional District Judge-cum-Chief Judicial Magistrate,
(Motor Accident Claims Tribunal,) Salem.

WEB COPY

2. The Section Officer,
V.R.Section,
High Court,
Madras.

+2 ccs to M/s.Dr.C.Ravichandran Advocate sr71664 & 71665

+1 cc to Mr.T.Ravichandran Advocate sr71913

+1 cc to Mr.D.Sivakumaran Advocate sr71793

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