

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2368 of 2015

Malliga

...

Appellant

Vs

1. Diamond Abraham

2. The Divisional Manager,  
United India Insurance Company Ltd.,  
Having office at  
No.46-51, T.K.M. Complex,  
Katpadi Road, Vellore.

...

Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order 29.10.2014 made in M.C.O.P.No.451 of 2011 on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Judge), Vellore.

For Appellant : Mr.C.Prabakaran

For Respondents : Mr.D.Baskaran for R2  
No Appearance for R1

O R D E R

This Civil Miscellaneous Appeal has been filed by the appellant against the order dated 29.10.2014 passed in M.C.O.P.No.451 of 2011 on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Judge), Vellore, dismissing the claim petition.

2. The appellant has filed the claim petition claiming compensation of Rs.25.00 lakhs for the death of Ganapathy in a road traffic accident that occurred on 06.07.2011 in the capacity of she being the sister of the deceased Ganapathy.

3. Resisting the claim petition, the 2<sup>nd</sup> respondent - insurance company filed counter.

4. Before the Tribunal, the appellant examined herself as

P.W.1 and one Ganesan was examined as P.W.2 and marked Exs.P1 to P5. On the side of the contesting respondent no oral and documentary evidence was adduced.

5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the container lorry bearing registration No.TN-04-D 2426 and that the 1<sup>st</sup> respondent, who is the owner of the offending lorry is vicariously liable for the negligent act of the driver. It was held that on the date of accident, the offending vehicle was insured with the 2<sup>nd</sup> respondent-insurance company and therefore, both the respondents 1 and 2 jointly and severally liable to pay compensation to the appellant. However, the Tribunal held that the appellant has failed to prove that she is the legal heir of the deceased and therefore, she is not entitled to get compensation for the death of her brother Ganapathy. Thus, the Tribunal dismissed the claim petition. Aggrieved by the same, the appellant has preferred this Civil Miscellaneous Appeal.

6. Assailing the order of the Tribunal, the learned counsel for the appellant submitted that the Tribunal went on the wrong footing that the appellant has not established her case that she is the dependent of the deceased, who is the only legal representative and despite steps taken by her, the Tahsildar refused to provide the legal heir certificate as the appellant is the Class-II legal heir. However, the Tahsildar has issued a relationship certificate to the effect that the appellant is the sister of the deceased. In such circumstances, the Tribunal ought to have held that the appellant is the legal heir of the deceased and she is entitled for the compensation.

7. The learned counsel further submitted that the Tribunal failed to note that sister is entitled to get compensation for the death of brother as legal heir, in case no Class I heir available. The Tribunal dismissed the claim petition on erroneous footing, which is unsustainable in law and prayed for setting aside the same.

8. Per contra, the learned counsel for the 2<sup>nd</sup> respondent - insurance company submitted that since the appellant has failed to produce the legal heir certificate to show that she is the legal heir of the deceased Ganapathy, the Tribunal rightly dismissed the claim petition. He would submit that no document has been produced to show that the deceased was residing with the appellant. Hence, prayed for dismissal of the appeal.

9. I have considered the submissions of Mr.C.Prabakaran, learned counsel appearing for the appellant and Mr.D.Baskaran, learned counsel for the 2<sup>nd</sup> respondent and also perused the

materials available on record. No representation on behalf of the 1<sup>st</sup> respondent.

10. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the appellant and secondly, none of those findings are under challenge. Only denial of compensation is under challenge by the appellant.

11. According to the appellant, she is the sister of the deceased Ganapathy, who died in a road traffic accident on 06.07.2011. Though the appellant has not produced the legal heir certificate, she had produced Ex.P3-relationship certificate issued by the Tahsildar to show that she is the sister of the deceased.

12. The Tribunal while dismissing the claim petition observed that if the appellant was Class II heir, what prevented her from obtaining the legal heir certificate from the Tahsildar. Further, no proof was produced to show that the deceased was residing with the appellant before the accident.

13. The point that arises for consideration is whether the appellant is entitled to get compensation for the death of deceased Ganapathy.

14. The contesting 2<sup>nd</sup> respondent - insurance company has not disputed the relationship between the appellant and the deceased Ganapathy. To disprove Ex.P3-relationship certificate issued in favour of the appellant, the 2<sup>nd</sup> respondent has not produced any material. In fact, no oral and documentary evidence was adduced by the 2<sup>nd</sup> respondent before the Tribunal. In the counter filed before the Tribunal, the 2<sup>nd</sup> respondent admitted that the appellant is the sister of the deceased.

15. It is the say of the appellant that she is the only legal heir of the deceased and therefore, she is entitled for the compensation. It is to be noted that there is no contra evidence was adduced either by the 2<sup>nd</sup> respondent - insurance company or by any other persons disputing the claim of the appellant.

16. Whether the sister of the deceased can maintain the claim petition even though she was not depending upon the income of the deceased for her maintenance is the moot question to be considered in this appeal.

17. Every legal representative who suffers on account of the

death of a person due to a motor vehicle accident should have a remedy for realization of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid.

18. The deceased was a quarry worker and there was no Class I heir available. A claim for compensation was made by a married sister i.e., the appellant. Before the Tribunal, an objection was raised by the 2<sup>nd</sup> respondent- insurance company that the appellant/claimant was not the dependent on the deceased and therefore, she is not entitled to make a claim for compensation. Finding that no proof has been filed to show that the deceased was residing with the appellant, the Tribunal dismissed the claim petition.

19. It is settled principle that the liberal view is to go to legal heirs of the deceased who died intestate and if the heirs are mother, sisters married and unmarried, married sister not being any longer dependent but for on her husband to get anything and thus, that dependency goes to the mother and the unmarried sisters only. Nowhere said a married sister or married daughter even sole heir not entitled to compensation, but for to say where there are dependents and non-dependents, only dependents to prefer for the entitlement.

20. In the case on hand, the appellant in her evidence deposed that before the accident the deceased was residing with her and there were no other legal heirs. No contra evidence was adduced by the 2<sup>nd</sup> respondent - insurance company to disprove the version of the appellant. Since the appellant has filed Ex.P3-relationship certificate to show that she is the sister of the deceased and in the absence of any other legal heirs, it is to be presumed that the appellant is the only dependent of the deceased. The appellant claimed as living together with the support of deceased being the only legal representative is entitled under personal law to compensation to the extent of loss of estate and to the extent of loss of dependency.

21. The Hon'ble Supreme Court in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai reported in 1987 ACJ 561 (SC), held that every legal representative who suffers on account of the death of a person due to motor vehicle accident should have a remedy to realize compensation under Section 110(A) of the M.V.Act. The Hon'ble Supreme Court in paragraph-12 to the conclusion observed that we should remember that in an Indian family brothers, sisters and brothers children

and some times foster children live together and they are dependent upon the bread winner of the family and if bread winner is killed on account of the accident, there is no justification to deny the compensation.

22.The Hon'ble Supreme Court clearly held as follows:

"12.We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of Torts that every injury must have a remedy. It is for the Motor Accidents Claims Tribunal to determine the compensation which appears to it to be just as provided in section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicle accidents. We express our approval of the decision in Megjibhai Khimji Vira v. Chaturbhai Taljabhai, 1977 ACJ 253 (Gujarat) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under section 110-A of the Act if he is a legal representative of the deceased."

23. The sum and substance of said expression of the Hon'ble Apex Court is that if a person is shown to be a legal representative, he is entitled to compensation if he suffers from such death. From the say of brother even entitled to compensation not by saying with any clog that he must be shown as dependent on the deceased. Thus, from a combined reading of the above gives the inevitable conclusion that dependency is not

the only criterion on one breathe, and mere legal representative is also not the only criterion on the other breath, but for to say if the claimant/s legal representative/s and sufferers from accidental death of deceased, entitled to compensation and one need not be a dependent legal representative; except to say where there are dependents and non-dependents, the dependents to be preferred for grant of compensation over non-dependents, however, if it is shown the non-dependents or any of them are the sufferers they are also entitled to compensation but for to say in fixing their quantum, their means also require consideration including while such apportionment.

24. In Megjibhai Khimji Vira V. Chaturbhai Taljabhai, reported in 1977 ACJ 253 (Guj.), the Gujarat High Court held that a nephew is entitled to maintain a claim petition being the sole relative and legal representative of deceased.

25. Every legal representative who suffers on account of death should have a remedy for realization of compensation. Here the word who suffers does not mean always a dependent as what is the contribution from the deceased last breathed is the sufferance to consider with reference to Section 166(1)(c) of the M.V.Act.

26. What emerges is the clear principle upon which, the entitlement to claim compensation, on the death of a person in a motor accident, is to be adjudicated upon. Any 'legal representative' including a 'legal heir' and not confined to a subsisting status governed by the laws of succession, would be entitled to claim compensation; provided he/she sustains an injury from the death caused by the motor accident; the injury being not one to be understood as one caused to the body of the individual involved in an accident. In the case on hand, as stated supra, the appellant being the only sister/legal heir is the only sufferer, as except the appellant, nobody come forward and opposed the claim of the appellant.

27. In the case of Managing Director, K.S.R.T.C., v. Venkataramappa K.S., reported in III (2003) ACC 457 (DB), the deceased was an agricultural labourer and there was no Class I heirs. A claim for compensation was made by the married sisters and brother. Before the Tribunal, an objection was raised by the Transport Corporation that the claimants were not the dependents on the deceased and therefore, they are not entitled to make a claim for compensation. However, the Tribunal has computed the dependency compensation, in addition to the compensation awarded under the conventional damages. Aggrieved by the same, the State Transport Corporation preferred an appeal to the High Court, reiterating the said averments. The High Court framed the following questions for consideration,

"(1) Whether the brothers and sisters of the deceased can maintain a claim petition even though they were not depending upon the income of the deceased for their maintenance?

(2) Whether the compensation awarded by the Tribunal is on the excessive side?"

Following the judgment in Hon'ble Supreme Court in Gujarat State Transport Corporation's case, (supra) and taking note of Section 8 of the Hindu Succession Act, which states that when a male Hindu dies intestate, his property has to be devolved, according to the provision of Section 8: i.e., (a) firstly, upon the heirs, being the relatives specified in Class I of the Schedule; and (b) secondly, if there is no heir of Class I then upon the heirs, being the relatives specified in Class II of the Schedule, the Hon'ble Division Bench of the Karnataka High Court, held that the claimants, viz., brothers and sisters, who had fallen under Class-II heirs, as per Hindu Succession Act, would be entitled to maintain a claim.

28. In C.M.A.(MD)No.140 of 2016 (Branch Manager, I.C.I.C.I. Lombard General Insurance Company, Mumbai v. Kaliyamoorthy and others) decided on 04.03.2016, the Hon'ble Division Bench of this Court held as under:

"21. It is a well recognised rule of interpretation of statutes that the expressions used in the statute, should ordinarily be understood, in which, they harmonise with the object of the statute and which effectuate the objection of the legislature and the Court should adopt an object oriented approach, keeping in mind the language employed in the statute. When the legislature has used the words, Legal Representatives in Section 166 of the Act, and having regard to the duty of the Court to act upon the true intention of the legislature, Mens or Sententia Legis, this Court is not inclined to accept the submissions of the Insurance Company, interpret and circumscribe the meaning of the words, Legal Representatives to mean only dependents. Just because a brother or sister is married, the right to represent the estate of the deceased is not taken away and such an interpretation, would make the provisions of law of succession, ineffective.

24. As the statute is very clear that all the legal representatives can maintain a claim under Section 166 of the Motor Vehicles Act, depending upon the loss of monetary benefit or the gratuitous and

invaluable services, measured in terms of money, that the legal representative, might have received and the likelihood of loss in the event of death, brother or sister can maintain a claim, the words "Legal Representatives", cannot be narrowed down to mean only, dependents."

29. In the case of New India Assurance Co. Ltd., v. Ashwin Vrajlal Rajgor reported in 2005 ACJ 1618, following the judgment in Megjibhai Khimji Vira v. Chaturbhai Taljabhai (supra), and Gujarat State Road Trans. Corp., v. Ramanbhai Prabhatbhai (supra), the Hon'ble Division Bench of the Gujarat High Court held that in the absence of Class-I legal representatives to represent the estate of the deceased, a brother's son, a Class-II heir and the brother's wife are entitled to claim compensation for the death of the deceased. The Hon'ble Division Bench has also taken note of the line of succession, as provided under the Hindu Succession Act, 1956 and held that the appellants therein, were entitled to compensation.

30. In the light of the above judgments, as regards dependency compensation is concerned, there is no hard and fast rule that brothers and sisters cannot maintain a claim petition for compensation under the said head. Each case has to be considered on its own merits. In the case on hand, the appellant is the sister of the deceased and she has produced the relationship certificate Ex.P3 to that effect. Following the decisions of the Hon'ble Supreme Court as well as the other High Courts, this Court is of the view that the appellant is the dependent of the deceased and she entitled to maintain the claim petition for the death of her deceased brother, as no Class I heir available.

31. Qua determination of compensation, in her claim petition, the appellant has stated that the deceased was a quarry worker and was earning Rs.9,000/- per month. Admittedly, no proof has been filed to prove that the deceased was earning Rs.9,000/- per month at the time of accident. Considering the age and the avocation, the deceased would have earned at least Rs.1,500/- per month and accordingly, fixed the monthly income. After deducting one-third towards his personal and living expenses, the monthly income would come to Rs.1,000/- and the annual income would come to Rs.12,000/- and adopting multiplier "13" applicable, the loss of dependency is calculated at Rs.1,56,000/-.

32. The contention of the learned counsel for the 2<sup>nd</sup> respondent - insurance company that the appellant, being the sister of the deceased, is not entitled to maintain a claim petition for the loss of estate and that they are entitled only

to compensation under 'No Fault Liability' is not accepted and this Court is of the considered view that as the appellant was aged 37 years at the time of accident and considering the fact that the deceased was unmarried and aged 41 years at the time of accident, one would have dependent on the income of the other and therefore, the appellant is entitled to maintain a claim petition under Section 166 of the Motor Vehicles Act. The contention of the 2<sup>nd</sup> respondent - insurance company that the appellant is entitled to the compensation only under 'No Fault Liability' is rejected.

33. In addition to the loss of dependency, a sum of Rs.15,000/- is awarded towards funeral expenses, Rs.25,000/- towards loss of love and affection and Rs.4,000/- towards transport charges.

34. Considering the facts and circumstances of the case in entirety, this Court is of the view that the Tribunal erred in dismissing the claim petition and the same is liable to be set aside in so far as declining the entitlement of compensation by the appellant and the point is answered in favour of the appellant.

35. In the result:

(a) the Civil Miscellaneous Appeal is partly allowed by setting aside the judgment dated 29.10.2014 made in M.C.O.P.No.451 of 2011 on the file of the learned Motor Accident Claims Tribunal (1<sup>st</sup> Additional District and Sessions Judge), Vellore;

(b) the 2<sup>nd</sup> respondent / Insurance Company is directed to pay a sum of Rs.2,00,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization within a period of eight weeks from the date of receipt of a copy of this order;

(c) the appellant is also entitled to get proportionate costs;

(d) on such deposit, the appellant/claimant is permitted to withdraw the award amount with interest and cost on filing proper application. Consequently, connected miscellaneous petition, if any, is closed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

VS

To

The Motor Accident Claims Tribunal,  
I Additional District and Sessions Judge,  
Vellore.

+1cc to Mr.D.Baskaran, Advocate, S.R.No.65765

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.65879

C.M.A.No.2368 of 2015

SPD (CO)  
CS/30/11/2018



WEB COPY