IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2623 of 2014

Savithri [died]
1.Shenbagavalli
2.Umaselvi
3.Rajasekaran ..Appellants/ petitioners

Versus

1.K.S.Shombiah

2.ICICI Lumbord General Insurance Co. Ltd.,
Rep.by its Divisional Manager,
Officer's Line, Opp to Venus theatre,
Vellore - 632 001,
Vellore District. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 20.09.2013 made in M.C.O.P.No.699 of 2009 on the file of the Motor Accident Claims Tribunal, Principal District Judge's Court, Vellore, Vellore District.

For Appellant : M/s.A.Gowthaman
For Respondents : M/s.K.K.Ramakrishnan [for R2]
R1-set exparte before Tribunal

*****

J U D G M E N T

The Petitioners/Claimants have filed this appeal against the order and decree dated 20.09.2013 made in M.C.O.P.No.699 of 2009 on the file of the Motor Accident Claims Tribunal, Principal District Judge's Court, Vellore, Vellore District.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the petitioners/claimants is that on 25.06.2009 at about 5.45 a.m., while the deceased Manivannan along with other persons was standing at Putthuthakku Bus Stop on the left side mud portion of the National Highways, the 1st respondent van bearing Registration No.KA-42-2099 came at high speed, dashed against the persons standing on the bus stop, resulting in the deceased suffering fatal injuries and he died subsequently, in Government Hospital, Chennai. The accident occurred due to the negligent driving on the part of the 1st respondent. The deceased was aged 45 years and from his lorry

business, he was earning a sum of Rs.20,000/- per month. The petitioners/claimants are the wife and children of the deceased and they were depending only on the earnings of the deceased - Manivannan. Due to sudden demise of the breadwinner of the family, they are now suffering not only due to monetary loss, but also from loss of love and affection. Thus, the petitioners/claimants seek a sum of Rs.20,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioners/claimants. The petitioners/claimants has to prove the age, income and occupation of the deceased. The place, date and time of the accident as stated in the petition is not admitted. The petitioners/claimants' relationship with the deceased is not admitted and they are not dependants on the deceased. The negligence of deceased also contributed to the accident and as such, the petitioners/claimants is not entitled to seek any compensation. It was only due to the deceased attempt to cross the road suddenly without noticing the on coming vehicle, the accident occurred. The claim of the petitioners/claimants is highly excessive. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

4. Before the Tribunal, the petitioners/claimants examined P.Ws.1 and 2 produced documents Exs.P.1 to P.14 to prove their claim. The respondents did not let in either oral or documentary evidence. After analysing the evidence on record, the Tribunal, found that the negligence of the 1st respondent - vehicle driver alone caused the accident and passed an award for a sum of Rs.58,000/- payable by the respondents to the petitioners/claimants. Being not satisfied with the award passed by the Tribunal, the petitioners/claimants have come forward with the present appeal.

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

6. The learned counsel for the petitioners/claimants contends that the Tribunal erred in granting award under No Fault Liability, when it has correctly concluded that the accident occurred due to negligent driving of the 1st respondent vehicle driver only. The eye-witness account of P.W.2, clearly proves that the 1st respondent - vehicle driver alone caused the accident. The conclusion of the Tribunal that the petitioners/claimants are not dependant of the deceased and as such, not entitled for compensation is not proper. The amount awarded by the Tribunal is very low. Thus, the petitioners/claimants seek to enhance the quantum of the award by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the claim of the petitioners/claimants is unsustainable. As the petitioners/claimants, even assuming as legal heirs of the deceased they were not depending upon the deceased and as such, not entitled to seek compensation. Thus, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

8. The learned counsel for the 2nd respondent/Insurance Company relied upon the ruling of the Apex Court reported in (2007) 10 Supreme Court Cases 643 [Manjuri Bera (Smt) Vs. Orientral Insurance Company Ltd., and another], to contend that the Tribunal is justified in awarding compensation under No Fault Liability only, since the petitioner/claimant are only legal heirs and are not dependants on the deceased. They also relied upon the ruling of this Court reported in (2008) 1 MLJ 1107 [G.Deivasigamani and Ors. Vs. Metropolitan Transport Corporation Ltd. Rep. By its M.D., Chennai Div.I, formerly known as Pallavan Transport Corporation Ltd.rep. By its M.D.], wherein it is held as follows:-

> " 8. Concurring with the view of Justice Arijit Pasayat, Justice S.H.Kapadia has clearly held that the liability in such cases would be limited only to the limited liability and held as under:
>
> 21. In my opinion, "No Fault Liability", envisaged in Section 140 of the said Act, is distinguishable from the rule of "Strict Liability". In the former, the compensation amount is fixed. It is Rs.50,000/- in cases of death [Section 140 (2)]. It is a statutory liability. It is an amount which can be deducted from the final amount awarded by the Tribunal. Since, the amount is a fixed amount/crystallized amount, the same has to be considered as part of the estate of the deceased. In the present case, the deceased was an earning member. The statutory compensation could constitute part of his estate. His legal representative, namely, his daughter had inherited his estate. She was entitled to inherit his estate. In the circumstances, she Written Statement entitled to receive compensation under "No Fault Liability" under Section 140 of the said Act. That section is a Code by itself within the Motor Vehicles Act, 1988.
>
> 9. The same principle was also reiterated in AIR 2007 SCW 4840 Hafizun Begum V. Md.Ikram Heque and Ors. Following the decision of the Supreme Court, appellants being brother and sisters, they would be entitled to receive compensation only under "No Fault Liability", in terms of Section 140 of the Act."

Thus, the learned counsel for the 2nd respondent/Insurance Company contends that the petitioner/claimant is not entitled to seek for higher amount as compensation.

9. The finding of the Tribunal to the effect that negligence of the 1st respondent - vehicle driver alone caused the accident is not challenged by the 2nd respondent/Insurance Company by filing any appeal. Thus, the conclusion of the Tribunal, based on the evidence of P.Ws.1 and 2 as well as contents of Ex.P.1 - F.I.R that negligence of the 1st respondent – vehicle driver alone caused the accident has become final.

10. The deceased suffered injuries in the accident and subsequently died, due to the same, is clearly proved by Ex.P.2 – Postmortem certificate and Ex.P.13 – Death certificate. The petitioners/claimants who are the wife and children are legal heirs of the deceased, as evidenced by Ex.P.14 – Legal heir certificate. The 1st petitioner/wife of the deceased died during the pendency of the OP proceedings and the same is evident from Ex.P.13 – Death certificate produced by the petitioners/claimants. The Tribunal, in such circumstances, found that the petitioners/claimants 2 to 4, who are the daughters and sons of the deceased are not dependants, as the two daughters are married and living with their respective husbands. Further, the son of the deceased has attained majority and cannot be considered as dependant. Thus, the Tribunal found the petitioners/claimants 2 to 4 are entitled only for a sum of Rs.50,000/- under the head "No fault liability" and further sum of Rs.3,000/- towards "Transportation" and Rs.5,000/- towards "Funeral expenses". Questioning the said conclusion of the Tribunal, the learned counsel for the petitioners/claimants contends that whether they are dependants or not, as the petitioners/claimants are legal heirs of the deceased they are entitled to seek compensation. It is also pointed out that the 1st petitioner/wife of the deceased - Manivannan has died during the pendency of the proceedings as evidenced by Ex.P.13. As such, the petitioners/claimants contends that under the Provision of Motor Vehicles Act, all Legal Representatives are entitled to seek compensation. In support of the same he relied upon the decision reported in 2016 (1) TN MAC 453 (DB), [Branch Manager, ICICI Lombard General Insurance Co., Mumbai Vs. Kaliyamoorthy and others], wherein, it is held as follows:-

> " 10. There is a distinction between being a dependent on the income and receiving a contribution from the deceased, either monetarily or through the services rendered by the deceased to the members of the family, Legal Representatives, which is also a decisive factor, in computing the Compensation. Though the provision under Section 2 (1)(d) of the Worksmen's Compensation Act, 1923, defines, who are all the dependants entitled to

claim Compensation under the Worksmen's Compensation Act, there is a clear distinction under Section 166 of the Motor Vehicles Act, which states that all the Legal Representatives are entitled to claim Compensation.

11. Section 2(1)(d) does not confer any Statutory right to a married daughter to seek for compensation under the Worksmen's Compensation Act. The said Act has come into force in 192. Whereas, Motor Vehicles Act was enacted in the year 1939. Section 166 of the Motor Vehicles Act, does not restrict the entitlement of a married daughter to prefer any claim along with others. Both Acts are Beneficial Legalisations. Nevertheless, there is a clear distinction insofar as the language employed under the Acts. When Section 2(1)(d) of the Worksmen's compensation Act, speaks about dependency, Section 166 of the Motor Vehicles Act, speak about the right of the Legal Representatives to succeed to the estate of the deceased. There is a specific inclusion of all Legal Representatives to claim for Compensation under Section 166 of the Motor Vehicle's Act. Therefore, merely because a married daughter has joined the other Claimants/Legal Representatives, or makes a separate claim, such claim cannot be said to be against the Statutory provision, and therefore, to be rejected in limini.

15. Exclusion of a married daughter/sister/brother from the Claim Petition, altogether would be opposed to the object of the Act and would be amounting to adding words to the legislation, which the Court is not supposed to do. As held by the Apex Court, even there is casus omissus, it is not for the Court to add words to the legislation. The construction and interpretation of the words, "Legal Representatives" in Section 166 of the Motor Vehicles Act, in the context and nature of legislation, being beneficial, should be interpreted in such a way not to take away the rights. Merely because a married daughter/sister is living with her husband, in a separate house, that by itself would not disentitle her from claiming Compensation, as a legal Representative, to represent, the estate of the deceased.

22. As the statue 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 are the gratuitous and invaluable services, measured in terms in 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, dependants."

11. Likewise, the petitioners/claimants also relied upon the decision reported in 2014 (2) TN MAC 453, [Managing Director, Tamil Nadu State Transport Corporation Vs. Muniammal and another], wherein it is held as follows:-

> " 10. In the case on hand, sisters aged about 53 & 33 respectively alone are the Claimants. Considering the age of the deceased, 45 years, the possibility of the deceased getting married in a short time, in which event the contribution to the parent's and siblings is likely to be cut drastically, would not have happened in the instant case. Perusal of the Award does not indicate that the State Transport Corporation, the Appellant herein, has elicited any evidence about the presence of the parents, at the time when the Claim Petition is made. When sisters/Claimants, have adduced evidence to the effect they are the Legal Representatives of the deceased, in the light of the decisions stated Supra, this Court is of the view that a claim made under Section 166 of the Motor Vehicles Act, 1988, by the sisters and brothers is maintainable and that they are entitled to the loss of contribution to the family, though, they may not, in strict sense be dependents of the deceased. The expression "Legal Representative of the deceased" entitled to succeed to the estate of the deceased under the common law, in the humble opinion of this Court, cannot be restricted to mean only the dependents."

12. The learned counsel for the petitioners/claimants also relied upon the decision reported in 2017 (1) TN MAC 383 (DB), [Anandha Lakshmi and others Vs. Tamil Nadu State Transport Corporation (Villupuram Division - I) Ltd.,], wherein it is held that under Section 166 of the Motor Vehicles Act, the legal representatives of the deceased, even if they are married daughters and sons of the deceased is entitled to maintain the claim petition. As such, the conclusion of the Tribunal that the petitioners/claimants are not dependants and therefore, they are entitled for compensation only on "No fault liability" is not correct and the same is to set aside.

13. Thus, it is to be considered as to how much compensation has to be awarded to the petitioners/claimants, who are the legal representatives of the deceased - Manivannan. The petitioners/claimants states that the deceased was aged 45 years and by carrying on lorry business as owner of the vehicle and also by working as broker was earning Rs.20,000/- per month. The driving license of the deceased is produced as Ex.P.5 and Post mortem report is marked as Ex.P.2. The Pan card of the deceased also produced

as Ex.P.12. In such circumstances, based on the said document the age of the deceased is fixed as 49 years. The correct multiplier to be applied for the said age group is '13'. The petitioner also produced Exs.P.7 to P.10 - Income tax assessment certificate, to prove the monthly income of the deceased. Considering the evidence of P.W.1 as well as the income tax returns filed by the petitioners/claimants, it will be appropriate to fix the monthly income of the deceased at Rs.6,500/- per month. As the deceased was aged 49 years, 25% of the income is to be added towards future prospects

[Rs.6500 + (Rs.6500 x 25%)] = Rs.8,125/-

As the number of dependants are 3, 1/3rd of income is to be deducted towards personal expenses. The loss of dependancy is calculated as follows:-

[Rs.8125 -(Rs.8125 x 1/3) x 12 x 13] = Rs.8,45,052/-

Thus, a sum of Rs.8,45,052/- is granted as compensation under the head "loss of dependancy". A sum of Rs.3,000/- provided by the Tribunal for Transportation is confirmed.

14. The Tribunal has awarded amount for funeral expenses at Rs.5,000/-. In view of the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], this court is inclined to modify and grant a sum of Rs.15,000/- towards funeral expenses and sum of Rs.15,000/- is awarded towards loss of estate. Accordingly, the award of the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of dependency	-	8,45,052.00
2	Funeral Expenses	5,000.00	15,000.00
3	Loss of estate	-	15,000.00
4	No fault liability	50,000.00	-
5	Transportation	3,000.00	3,000.00
	Total	58,000.00	8,78,052.00 rounded off Rs.8,78,000.00

15. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.8,78,000/- from Rs.58,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above modified award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The compensation amount shall be paid to the claimants in equal proportionate.

(v) On such deposit, the petitioners/claimants are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

No costs.

Sd/-
Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

bri
To
1.The Motor Accident Claims Tribunal,
Principal District Judge's Court,
Vellore, Vellore District.

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

+1cc to Mr.P.T.Ramadevi , Advocate SR.No. 52031
+1cc to Mr.A.Gowthaman , Advocate SR.No. 51627

C.M.A.No.2623 of 2014

ASK(25/09/2018)