



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CMA(MD).No.625 of 2018 and
CMP(MD).No.7335 of 2018

Sasikala : Appellant/ 4th claimant

Vs.

1.A. Selvaraj

2.United India Insurance Company Limited,
rep. by the Branch Manager
at Dharapuram.

3.Ravi : Respondents 1 to 3/Respondents 1,2,3

4.Saravanapriya

5.Minor Subash

6.Rajamani

7.Minor Harish : Respondents 4 to7 / Claimants 1,2,3 and 5

(Minors 5th and 7th respondents are rep. by
their mother, 4th respondent)

Prayer: The Civil Miscellaneous Appeal is is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order, dated 28.10.2015 made in MCOP.No.79 of 2007 on the file of the Motor Accidents Claim Tribunal - Cum - Sub Court, Kulithalai and modify the same insofar as not awarding any compensation to the appellant herein.

For Appellant : Mr. N. Mohan

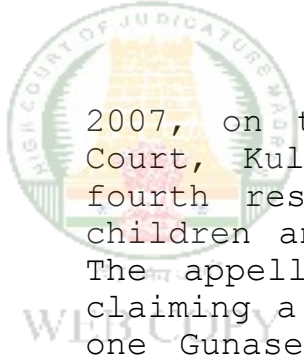
For R2 : Mr. N. Dilipkumar in SR stage

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Award, dated 28.10.2015 made in MCOP.No.79 of 2007, on the file of the Motor Accidents Claim Tribunal - Cum - Subordinate Judge, Kulithalai and modify the same insofar as not awarding any compensation to the appellant herein.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The appellant is the fourth claimant in MCOP.No.79 of



2007, on the file of the Motor Accidents Claims Tribunal / Sub Court, Kulithalai. The appellant is the sister of the deceased; fourth respondent is wife; the respondents 5 and 7 are minor children and the sixth respondent is the mother of the deceased. The appellant and the respondents 4 to 7 filed claim petition claiming a sum of Rs.8,00,000/- as compensation for the death of one Gunasekaran, who died in the accident, that was occurred on 01.10.2006.

3. Before the Tribunal, the parties let in both oral and documentary evidence. The Tribunal awarded a total sum of Rs.11,05,000/- as compensation to the respondents 4 to 7 herein and held that they are entitled to the said sum as per the apportionment mentioned in the award. The Tribunal held that the appellant, who is the sister of the deceased, is not entitled to any compensation as she was married. Challenging the said finding of the Tribunal, she has filed the present Civil Miscellaneous Appeal.

4. The learned counsel appearing for the appellant contended that the Tribunal erred in discriminating the appellant from other claimants in awarding compensation. He further contended that the appellant is the loving sister of deceased and she is physically challenged with 50% of disability, as she was affected by Polio and she is also one of the legal representatives of the deceased and all the legal representatives are entitled to get the compensation. He further stated that the Tribunal erred in rejecting the claim of the appellant on the ground that she is married, which is contrary to the Judgment of this Court and Apex Court.

5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. It is well settled that the compensation for death of a person in the accident can be granted to the legal representatives, who are the dependants of the deceased. The appellant, who is the sister of the deceased, is not a legal heir, when wife, children and mother of the deceased are alive and they are Class I legal heirs. The appellant cannot be treated as legal representative. To get compensation, as the legal representative, it is for the appellant to prove that she is dependant on the deceased. In the present case, the appellant has not let in any evidence to show that she is dependant on the deceased, even though she is married. The learned counsel appearing for the appellant contended that the appellant is physically challenged with 50% disability affected by Polio. The appellant being physically handicapped person, will not automatically entitle her to get compensation for the death of her brother. The appellant being married sister failed to prove that she is dependant on the deceased. Considering the facts and circumstances of the case and also considering the fact that the appellant is residing along with her husband, the Tribunal has rightly dismissed the claim petition only against the appellant. In such circumstances, this Court is of view that there is no error



in the Award passed by the Tribunal.

7. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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/True copy/

Sd/
Assistant Registrar (CS-III)

Sub Assistant Registrar (CS-II)

To
The Subordinate Judge,
The Motor Accidents Claim Tribunal, Kulithalai.

Copy to:
The Record keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1cc to Mr.N.DILIP KUMAR, Advocate, SR.No.78647

CMA (MD) .No.625 of 2018 and
CMP (MD) .No.7335 of 2018

13.08.2018

TRP
KK/SKN/SAR-2/26.10.2018/3P-5C