

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 07.12.2018

DELIVERED ON 22.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.1294 OF 2008

1. M.Kothandan
2. Ambrose ... Appellants/Claimants

Vs.

1. R.Asokan
2. The Assistant Manager,
United India Insurance Company Limited,
III Floor, No.38, Anna Salai,
Mount Road, Chennai-2. ... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of compensation awarded in M.C.O.P.No.463 of 2000 dated 31/10/05 by the Additional District Judge, Motor Vehicle Accidents Claims Tribunal, Fast Track Court II, Kancheepuram.

For Appellants : Mr.R.Mubarak Basha
For 2nd Respondent : Mr.Arunkumar
For 1st respondent : No appearance

J U D G M E N T

The appellants are the claimants in MCOP No.463 of 2000 on the file of the Additional District Judge, Motor Vehicle Accident Claims Tribunal, Fast Track Court II, Kancheepuram and they filed the said claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.2,00,000/- for the death of their brother Purushothaman in a road accident that took place on 07.03.1997.

2. The brief case of the appellants/claimants is as follows. On 07.03.1997, the deceased Purushothaman was walking along Kancheepuram-Madras High Road and at about 5.30 p.m. a speeding Maruthi car bearing registration No.PY-01-H-3803, belonging to the first respondent and insured with the 2nd respondent hit the deceased Purushothaman, as a result of which,

he sustained injuries and subsequently died in a hospital. According to the claimants, the rash and negligent driving of the driver of the Maruthi car bearing registration No.PY-01-H-3803 was the cause of the accident and that since the first respondent insured his vehicle with the 2nd respondent, both of them are jointly and severally liable to pay compensation to him.

3. The learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track Court II, Kancheepuram, after analysing the evidence on record, dismissed the entire claim petition observing that since the claimants are brother and sister of the deceased Purushothaman and are not depending on the income of the deceased, they cannot maintain a petition seeking compensation for the death of the deceased Purushothaman.

4. Aggrieved over the orders passed by the tribunal, the appellants/claimants have filed the present appeal.

5. Mr.R.Mubarak Basha, learned counsel appearing for the appellant would contend that a person claiming to be a legal representative has locustandi to maintain an application for compensation and the tribunal has committed a gross error by dismissing the entire claim petition. He also placed reliance on the following decisions.

i] Montford Brothers of St. Gabriel and another V. United India Insurance and another etc., reported in 2014-3-L.W.1 (S.C.)

ii] Parameshwari V. Amir Chand and others reported in (2011) 5 MLJ 900 S.C.

iii] Managing Director, Tamil Nadu State Transport Corporation Ltd., Villupuram Division-II, Rangapuram, Vellore V. M.Shanthi and others reported in (2010) 5 MLJ 1039.

6. In the decision in Managing Director, Tamil Nadu State Transport Corporation Ltd., Villupuram Division-II, Rangapuram, Vellore V. M.Shanthi and others reported in (2010) 5 MLJ 1039, a single Bench of this court held that when a claim petition is made by a legal representative contending that the deceased was contributing a portion of his income to him during his life time and if the said contention is disputed, it is the bounden duty of the objector to let strong rebuttal evidence to dislodge the claim of dependency. In the above decision, the learned single Judge also referred the decision of the Honourable Supreme Court in Gujarat State Road Transport Corporation, Ahmedabad V. Ramanbhai Prabhatbhai and another reported in AIR 1987 SC 1690. The Honourable Supreme Court at para 10 had held as follows.

10. Clauses (b) and (c) of Sub-Section (1) of Section 110-A of the Act provide that an application for compensation arising out of an accident may be made where death has resulted from the accident by all or any of the legal representatives of the deceased or by any agent duly authorised by all or any of the legal representatives of the deceased. The proviso to sub-section (1) of Section 110-A provides that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application. The expression 'legal representative' has not been defined in the Act. Section 2(11) of the Code of Civil Procedure, 1908 defined "legal representative" as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The above definition, no doubt, in terms does not apply to a case before the Claims Tribunal but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the Code of Civil Procedure. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of sub-section(1) of Section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident and clause (c) of that sub-section authorises any agent duly authorised by all or any of the legal representatives of the deceased to make it. the proviso to sub section (1) of Section 110-A of the Act appears to be of some significance. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-A(1) of the Act thus expressly states that (i) an

application for compensation may be made by the legal representatives of the deceased or their agent, and (ii) that such application shall be made on behalf of or for the benefit of all the legal representatives. Both the person or persons who can make an application for compensation and the persons for whose benefit such application can be made are thus indicated in Section 110-A of the Act".

7. In the decision in Managing Director, Tamil Nadu State Transport Corporation Ltd., Villupuram Division-II, Rangapuram, Vellore V. M. Shanthi and others reported in (2010) 5 MLJ 1039, in paragraphs 20 and 21, this court has held thus.

"20. Following the judgment in Supreme Court in Gujarat State Road Transport Corporation, Ahmedabad V. Ramanbhai Prabhatbhai and Another (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 or Class I, then upon the heirs, being the relatives specified in Class II of the Schedule, the 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.

21. In New India Assurance Co. Ltd. V. Ashwin Vrajlal Rajgor (supra), a Division Bench of Gujarat High Court considered the entitlement of the brother's son and brother's wife (sister-in-law) of the deceased, similar to that of the present case, for compensation. Following the judgment in Megjibhai Khimji Vira V. Chaturbhai Taljabhai (supra), wherein, a Division Bench has held that the claim for compensation arising out of use of motor vehicle can be maintained by brothers and nephews, who are the legal heirs and also of the judgment of the Supreme Court in Gujarat State Road Trans. Corpn., V. Ramanbhai Prabhatbhai (supra), another Division of the Gujarat High Court in New India Assurance C. Ltd. V. Ashwin Vrajlal Rajgor (supra) case, 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 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."

8. In the instant case, initially, the claim petition was filed by the brother of the deceased. Since it was stated by him during the pendency of the claim petition that the deceased had another sister by name Ambrose, she was also impleaded as 2nd claimant. The first claimant Kothandan died. The 2nd claimant/2nd appellant did not take steps to implead the legal heirs of the deceased Kothandan. More over, the legal heirs of the deceased first claimant namely Kothandan also did not file any petition to implead themselves as parties to the present appeal. Therefore, the appeal as against the first appellant/first claimant stands abated.

9. The tribunal, in paragraph No.9 of its order, has observed thus.

This is a strange case which has to be looked into very carefully, since, no one attended on the victim immediately after the occurrence. According to the first petitioner, the deceased was living with him under the same roof and he was depending on the income of the deceased in full. Having deposed as above, it is clearly seen in the documentary evidence that the victim was not attended by any one immediately after the occurrence namely on 7.3.1997. Ex.P4 is the extract of the Accident Register pertaining to an unknown person whose name has not been noted there. Ex.P2 is the Postmortem Certificate dated 11.03.1997 and this document clearly shows that the Postmortem took place only after five days of the occurrence.

10. It is relevant to note down that the claimants belong to lower strata of the society and they were all doing their respective work in different parts of Chennai and the accidental death of the deceased Purushothaman was informed to the appellants/claimants only after two days by the police. This is so because the deceased Purushothaman was a bachelor and was living separately. In such circumstances, merely because the body of the deceased was identified by the first appellant after a lapse of 5 days, it cannot be a sole ground to dismiss the entire claim petition made by the claimants. It is not disputed by the respondents that the claimants are the brother and sister of the deceased Purushothaman. Therefore, the legal

representatives of the deceased Purushothaman are entitled to maintain a claim petition under Section 166 of the Motor Vehicles Act.

11. Quantum of compensation

The deceased Purushothaman died as a bachelor at the age of 40. According to the claimants, he was a mason earning a sum of Rs.3,000/- per month. Though no proof of income was adduced before the tribunal, the deceased would have easily earned a sum of Rs.3,000/- per month, since he was mason on the date of accident. Hence, the monthly income of the deceased Purushothaman is fixed at Rs.3,000/-. To this sum, as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, 25% should be added towards future prospects and hence the monthly income of the deceased is fixed at Rs.3,750/- (3,000 + 750 = 3750). Since the deceased died as a bachelor, 50% should be deducted towards his personal expenses and thus it would be a sum of Rs.1,875/-. The age of the deceased was 40 years on the date of accident and the proper multiplier to be adopted in the instant case is 13, as per the decision in Sarala Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Calculation for loss of dependency is worked out hereunder.

Calculation for Loss of dependency

= 3000 + 750 = 3750

= 3750 - 1875 = 1875

= 1875 x 12 x 13 = Rs.2,92,500

In addition to that, as per the decision rendered by the Constitution Bench of the Honourable Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, the claimants are entitled to Rs.40,000/- Rs.15,000, Rs.15,000/- and Rs.40,000/- towards "Love and affection, "Loss of Estate" and "Funeral Expenses" respectively. Thus, the claimants are entitled to a total compensation of Rs.3,62,500/- (2,92,500 + 40,000 + 15000 + 15000 = 3,62,500) which is extracted here under.

Sl.No	Heads	Amount
1	Loss of dependency (1875x12x13)	2,92,500
2	Love and affection	40,000
3	Loss of Estate	15,000

Sl.No	Heads	Amount
4	Funeral Expenses	15,000
	Total	3,62,500

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. The claimants 1 and 2 are equally entitled to half share in the compensation amount. However, as already discussed, since no legal heirs of the first appellant have been impleaded and the appeal against the first claimant stands abated, the 2nd appellant/2nd claimant is entitled to half share of compensation i.e. a sum of Rs.1,81,250/- (3,62,500 -1,81,250) which shall carry interest at the rate of 7.5% per annum.

13. In the result,

i) The appeal is allowed. No costs. The Orders passed by the tribunal is set aside.

ii) The appeal against the first appellant/ first claimant stands abated.

iii) The second appellant/second claimant is entitled to a sum of Rs.1,81,250/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

iv) The second appellant /second claimant is directed to pay necessary court fee, if any, for the compensation amount.

v) The insurance company is directed to deposit the compensation of Rs.1,81,250/- along with interest at the rate of 7.5% per annum, within a period of 4 weeks from the date of receipt of a copy of this order.

vi) On such deposit being made by the Insurance company, the second claimant is entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court II,
Kancheepuram

copy to:

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

+1cc to Mr.Arunkumar, Advocate sr.5158

+1cc to Mr.R.Mubarak Basha, Advocate sr.no.4622

CMA.No.1294 of 2008

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nr 10/04/2019