

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2931 of 2007

and

M.P.No.1 of 2007

The United India Insurance Co. Ltd.,
Branch Office, Coimbatore. ... Appellant/3rd Respondent

Vs.

1. Kutty @ Palaniammal
 2. P.Gnanavel
 3. S.Richard Illey George
 4. Ganesan
 5. Saraswathi
- ... Respondents/Petitioner and
Respondents 1, 2, 4 & 5

Prayer This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed in M.C.O.P.No.1029 of 2005 dated 02.11.2006 by the III Additional Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore.

For Appellant : Mr.M.B.Gopalan

For Respondents : Mr.K.Thilageswaran for R1
R2 to R5 - Exparte in
Lower Court

J U D G M E N T

The United India Insurance Company Limited, Coimbatore, who is the 3rd respondent in MCOP No.1029 of 2005 on the file of the III Additional Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore has filed the present appeal questioning the quantum of compensation awarded by the tribunal.

2. The first respondent / claimant has filed the above said claim petition under Section 166(1) of the Motor Vehicles Act claiming compensation of Rs.3,00,000/- for the death of her husband in a road accident that took place on 17.05.1997.

3. The case of the first respondent/claimant is that on 17.05.1997, the deceased Vanjimuthu was driving a tempo van bearing registration No.T.A.G 5319 along Pollachi Main road and at about 5.45 p.m., a speeding lorry bearing

registration No.MDE-5947 belonging to the 3rd respondent herein, insured with the present appellant, hit the tempo van, as a result of which the deceased sustained grievous injuries and was admitted as an inpatient in CMC hospital, Vellore. However, he succumbed to injuries on 19.05.1997 in the Hospital. According to the claimants the rash and negligent driving of the driver (2nd respondent herein) of the lorry was the cause of accident and that since the third respondent, the owner of the lorry had insured his vehicle with the appellant herein, all of them are jointly and severally liable to pay compensation to her.

4. The owner and driver of the offending vehicle remained absent before the tribunal and therefore, they were set exparte. The 4th and 5th respondents are the parents of the deceased Vanjinathan and they also remained absent before the tribunal and were set exparte. The present appellant contested the claim petition.

5. The III Additional Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore, after analysing the evidence on record, awarded a compensation of Rs.4,15,000/- to the claimant as well as the the parents of the deceased together with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit. Aggrieved over the orders passed by the tribunal, the present appeal is filed by the National Insurance Company Limited.

6. Mr.M.B.Gopalan, learned counsel appearing for the appellant contended that the claimant Kutti alias Palaniammal left the matrimonial home even before the accident and was living with one Krishnamoorthy and therefore, she is not liable to claim compensation from the insurance company. He further contended that though an investigation Report (Ex.R1) and voters list (Ex.R2) were filed before the tribunal to prove this contention, the tribunal, without considering these two documents, awarded a compensation of Rs.2,15,000/- to the claimant from out of the total compensation of Rs.4,15,000/- awarded to the claimant and parents of the deceased (respondents 4 and 5 herein). His specific contention is that since the claimant was not a depending on the income of the deceased, on the date of accident, she cannot claim any compensation.

7. Per contra, Mr.K.Thilageswaran, learned counsel appearing for the claimant contended that as per Section 166 (c) of the Motor Vehicles Act, an application for compensation arising out of an accident of the nature specified in Sub Section(1) of Section 165 may be made, by all or any of the legal representatives of the deceased as the case may be. Her specific contention is that the word "legal representative" cannot be narrowed down to mean only dependents, as per the decision of a Division Bench of this court in Branch Manager,

ICICI Lombard General Insurance Company, Mumbai Vs. Kaliyamoorthy and others reported in CDJ Law Journal 2016 Madras High Court 1614. He further relied on the decision in Sarayu Vs. Surendra Vithal Nazare reported in (2011) 2 MLJ 1 and contended that re-marriage of the wife of the deceased would not dis entitle her from claiming compensation.

8. It is to be noted that the word "Legal Representative" as defined under Section 2(11) of the Code of Civil Procedure means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased. In fact, the definition " Legal Representative " as contained in Section 2(11) of the Code of Civil Procedure is inclusive in character and is not confined to legal heirs only.

9. In the instant case, the appellant mainly relies on the investigation Report (Ex.R1) filed by the investigator. But the said report is bereft of several particulars. The investigator (RW1) in his report has not mentioned the names of the persons enquired by him, whose evidence led him to come to the conclusion that the claimant left the matrimonial home and started living with one Krishnamoorthy. The evidence of the persons, who were examined by him, also had not been filed by the investigator. Apart from this, the voters list though say that one Palaniammal is the wife of Krishnamoorthy, there is no evidence to show that the claimant Palaniammal, who filed the MCOP is the person shown in the voters list Ex.R2. Therefore, merely based on Ex.R1 and Ex.R2, this court cannot come to a conclusion that the claimant deserted the victim and started living with another man.

10. More over, in the instant case, the parents of the deceased were shown as respondents 4 and 5 in the MCOP No.1029 of 2005. Though notices were served on them, they did not appear before the tribunal and therefore, they were set exparte. If really Palaniammal (claimant) had deserted their son and lived with one Krishnamoorthy, they would have definitely appeared before the tribunal and would have explained all the facts. Therefore, the tribunal was right in concluding that in the absence of evidence, it cannot be concluded that the claimant was living with some other person, after deserting the deceased Vanjimuthu. All the observations made by the tribunal are perfectly in order and therefore, I do not find any reason to interfere with the same. A perusal of the quantum of compensation awarded by the tribunal is also appear to be reasonable and in fact, neither the claimant nor the parents of the deceased filed any appeal against the quantum of compensation awarded by the tribunal.

11. Inview of all the reasons stated by me, the appeal filed by the United Indina Insurance Company Limited is liable to be dismissed.

12. In the result, the civil miscellaneous petition is dismissed. No costs. The orders passed in M.C.O.P.No.1029 of 2005 dated 02.11.2006 by the III Additional Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore is upheld.

Sd/-
Assistant Registrar(Ad-I)

//True copy//

Sub Assistant Registrar

mst

To

The III Additional Subordinate Judge,
Motor Accident Claims Tribunal, Coimbatore.

Copy to
The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.M.B.Gopalan, Advocate SR.No.76928

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M.P.No.1 of 2007

SS(CO)
GMY(21/05/2020)