IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	22.09.2020
Pronounced On	13.10.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.967 of 2005 and 166 of 2006
and
C.M.P.No.5304 of 2005

(Through Video Conferencing)

C.M.A.Nos.967 of 2005:-

1.S.Rajamanickam

2.Nallayammal ... Appellants/Respondents 5 & 6

Vs.

1.R.Manjula

2.Minor B.Vignesh

3.Subramani

4.Tamilnadu State Transport Corporation Ltd.,
(Coimbatore Division II),
represented by its Managing Director,
Erode.

5.N.S.Srinivasan

6.The New India Assurance Co. Ltd.,
1360, Amman Complex, EVN Road, Erode.
... Respondents/Petitioners/Respondents 1 to 4

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree dated 27.10.2004 in M.A.C.T.O.P.No.878 of 2003 on the file of the Motor Accident Claims Tribunal (The Principal District Judge), Erode, so far it relates to exclusion of the appellants herein from receiving the compensation.

For Appellants : Mr.D.Shivakumaran

For R1 & R2 : M/s.Kaithamalai Kumaran

For R4 : Mr.Sundaravadhanan

For R6 : M/s.Janani for Mr.J.Chandran

C.M.A.Nos.166 of 2006:-

The Managing Director,
Tamilnadu State Transport Corporation,
Division No.II, Ltd., Erode. ... Appellant/2nd Respondent

Vs.

1.R.Manjula

2.Minor B.Vignesh

3.Subramani

4.N.S.Srinivasan

5.The New India Assurance Co. Ltd.,
Erode 1360, Amman Complex,
EVN Road, Erode.

6.Rajamanickam

7.Nallayammal ... Respondents/Petitioners/
Respondents 1,3,4 to 6

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and Judgment passed by the Motor Accidents Claims Tribunal, (Principal District Judge), Erode, made in M.C.O.P.No.878 of 2003, dated 27.10.2004.

For Appellant : Mr.Sundaravadhanan

For R1 & R2 : M/s.Kaithamalai Kumaran

For R5 : M/s.Janani for Mr.J.Chandran

For R6 & R7 : Mr.D.Shivakumaran

COMMON JUDGMENT

By this common Judgment, both the Civil Miscellaneous Appeals are being disposed.

2. Both Civil Miscellaneous Appeals have been filed against the impugned Judgment and Decree dated 27.10.2004 passed by the learned Principal District Judge of Erode District at Erode in M.A.C.T.O.P.No.878 of 2003.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.7,42,000/- as compensation together with interest at 9% per annum from the date of the claim petition till the date of deposit, to the 1st and the 2nd respondents/claimants, who are the wife and the minor son of the deceased R.Balasubramaniam.

4. C.M.A.No.967 of 2005 has been filed by the parents of the deceased R.Balasubramaniam on the ground that the compensation determined by the Tribunal has not awarded to them but only to the claimants (i.e., wife and the minor son of the deceased R.Balasubramaniam) who are the 1st and 2nd respondents in these Civil Miscellaneous Appeals.

5. C.M.A.No.166 of 2006 has been filed by the Tamil Nadu State Transport Corporation on the ground that the deceased had taken an L.I.C Policy and that the mother of the deceased (the 2nd appellant in C.M.A.No.967 of 2005) had received the insurance claim vide cheque No.342434 dated 31.07.2003 drawn on Canara Bank under the LIC Policy.

6. Heard the learned counsel for the respective appellants, the learned counsel for the 1st and 2nd respondents/claimants and the learned counsel for the 6th respondent in C.M.A.No.967 of 2005.

7. On behalf of the parents (appellants in C.M.A.No.967 of 2005), it was argued that though P.W.3 the Manger of LIC of India had deposed that the mother of the deceased (the 2nd appellant in C.M.A.No.967 of 2005) had received the compensation under the LIC policy, during the cross examination, P.W.3 asked for further time to verify the records as to whether the amount was indeed paid to the wife of the deceased since the records available with him indicated the payment of the compensation under the LIC policy only to the mother of the deceased (the 2nd appellant in C.M.A.No.967 of 2005) and not to the wife of the deceased.

8. He further submits that merely because the parents were living with the other sons, ipso facto did not dis-entitle them of the dependent compensation as per the decision of this Court in Sarayu Vs. Surendra Vithal Nazare, 2012 ACJ 1230. He further submits that even if the compensation under the LIC Policy has been received by the mother of the deceased (the 2nd appellant in C.M.A.No.967 of 2005), the amount payable under the Motor Vehicles Act, 1988 cannot be denied to them as parents as they are also the legal representatives within the meaning of Section 166 of the Motor Vehicles Act, 1988.

9. He further submits that it was open for the claimants (1st and 2nd respondents) to summon the records from the Life Insurance Corporation Limited to substantiate that the amount was indeed paid to the mother of the deceased (the 2nd appellant in C.M.A.No.967 of 2005). He further submits that even if the amount was received by the mother of the deceased (the 2nd appellant in C.M.A.No.967 of 2005), she would have received the amount only as a trustee for and on behalf of all the legal heirs of the deceased and proceeds of the compensation was to be distributed among the legal heirs. Therefore, the Tribunal ought not to have came straightaway to the conclusion that since the mother of the deceased (2nd appellant in C.M.A.No.967 of 2005) had received the amount under the LIC policy, the parents of the deceased (appellants in C.M.A.No.967 of 2005) were not entitled to the compensation under the Motor Vehicles Act, 1988 as the legal representatives of the deceased along with other claimants.

10. On behalf of the State Transport Corporation (appellant in C.M.A.No.166 of 2006), it was submitted that the compensation payable under Section 166 read with 168 of the Motor Vehicles Act, 1988 was on account of the loss of estate due to the death of the R.Balasubramaniam and therefore, the Tribunal ought to have deducted compensation received under the LIC policy by the mother of the deceased (the 2nd appellant in C.M.A.No.967 of 2005). He further submits that a sum of Rs.7,42,000/- awarded by the Tribunal vide impugned Judgment and Decree should be proportionately reduced by an amount of Rs.2,55,046/- as compensation received by the mother of the deceased (2nd appellant in C.M.A.No.967 of 2005) under the aforesaid aforesaid LIC policy.

11. On behalf of the claimants (1st and 2nd respondents in the respective appeals) who are the wife and the minor son of the deceased, it was submitted that the parents of the deceased (appellants in C.M.A.No.967 of 2005) were not dependents and therefore, they were not entitled to the compensation. The learned counsel for the claimants (1st and 2nd respondents) further reiterated that the amount released to the mother of the

deceased (2nd appellant in C.M.A.No.967 of 2005) on account of the death of the deceased under the LIC policy need not to be deducted from the compensation awarded and therefore, prayed for dismissal of the respective appeals.

12. I have considered the arguments advanced on behalf of the respective appellants in the respective appeals. I have also considered the arguments advanced on behalf of the claimants (the 1st and 2nd respondents in these appeals), namely, wife and minor child of the deceased R.Balasubramaniam.

13. As per the decision of the Division Bench of this Court in Sarayu Vs. Surendra Vithal Nazare's case referred to supra, wife of deceased, who re-married her husband's brother after her husband's death, was held entitled to claim compensation as a legal representative along with her mother-in-law on the premises that the word "Legal Representative" as defined in Section 2(11) of the C.P.C. 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 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. Under these circumstances, the Court held that the Tribunal had committed a grave error of law in holding that the parents particularly the mother of the deceased was not a legal representative.

14. As has been repeatedly held, Tribunals, the High Court as also the Hon'ble Supreme Court are required to ensure that the legal representatives of the deceased receive just compensation under the Act. Whether the compensation has been paid under the life insurance policy to the mother of the deceased (the 2nd appellant in C.M.A.No 967 of 2005) or to the wife of the deceased (1st respondent in these appeals) is of no relevance as far as determination and payment of compensation under the provisions of the Motor Vehicles Act, 1988 is concerned.

15. The provisions of the Motor Vehicles Act, 1988 also does not contemplate the deduction of amounts received by the dependents independently on account of the death of the person which incidentally gave rise to a claim petition under the provisions of the said Act before the Motor Accidents Claims Tribunal. Under these circumstances, I do not find any merit in C.M.A.No.166 of 2006 filed by the State Transport Corporation. Accordingly, I hold C.M.A.No.166 of 2006 is liable to be dismissed.

16. Coming to the other appeal, namely C.M.A.No.967 of 2005 is concerned, certainly, parents of the deceased are also legal representatives of the deceased and therefore, are entitled to compensation particularly when they are dependent on the income of the deceased. Merely because they may be residing with their other sons, ipso facto cannot justify a conclusion that they were not dependent on the income of the deceased. At the same time, there is overwhelming evidence on record in the form of deposition of PW3 who has stated that the mother of the deceased (the 2nd appellant in C.M.A.No 967 of 2005) has directly received the compensation under the LIC Policy as she was the nominee named by the deceased. The amount that was paid under the policy was for a sum of Rs.2,55,046 /-. It is almost 1/3rd of the amount of compensation awarded by the Tribunal to the claimants (the 1st and the 2nd respondents). Thus, the family as such has got Rs.9,97,046/- (7,42,000 + 2,55,046) which has to be adjusted interse between them. It is a private dispute between the 1st and the 2nd respondents in the respective appeals on the one hand and the appellants in C.M.A.No 967 of 2005. Therefore, if there is any unjust denial of compensation, it is to be worked out independently by establishing that mother of the deceased (the 2nd appellant in C.M.A.No 967 of 2005) had received the aforesaid sum of Rs.2,55,046/- from the Life Insurance Corporation of India. This amount cannot be agitated in this appeal. Therefore, I do not find any merits in C.M.A.No 967 of 2005 filed by the parents. Therefore, the said appeal is also liable to be dismissed.

17. Therefore, the State Transport Corporation (appellant in C.M.A.No.166 of 2006) is directed to deposit the amount of compensation awarded by the Tribunal together with interest and cost as directed by the Tribunal, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

18. On such deposit, the 1st respondent/claimants is permitted to withdraw her share awarded by the Tribunal together with interest and cost, less any amount already withdrawn, by filing suitable application before the Tribunal. The 2nd respondent/2nd claimant was aged about 2½ years at the time of filing of the claim petition in 2003 and he would have been attained the age of majority. Therefore, 2nd respondent/2nd claimant is permitted to file appropriate application before the Tribunal for recording the age of majority to withdraw his share together with interest. The Tribunal may thereafter permit the 2nd respondent/2nd claimant to withdraw his share.

19. In the light of the above, both the Civil Miscellaneous Appeals filed by State Transport Corporation and the parents of the deceased are dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
(The Principal District Judge),
Erode.

Copy to

The Section Officer,
VR Section, High Court of Madras.

+1cc to Mr.D.Shivakumaran, Advocate Sr.34180
+2cc to Mr.S.Kaithamalai Kumaran, Advocate Sr.33931 and 33930
+2cc to Mr.A.Sundaravadhanan, Advocate SR.34067 and 34068
+1cc to Mr.J.Chandran, Advocate Sr.34073

C.M.A.Nos.967 of 2005
and 166 of 2006 and
C.M.P.No.5304 of 2005

spd[co]
srg 28/04/2021