

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3453 of 2019
and
CMP.No.20242 of 2019

The Branch Manager,
United India Insurance Co.Ltd.,
Branch Office,
No.2, Bhuvaneshwari Complex,
Dr. Sankaran Road,
Namakkal 637 001

... Appellant/
2nd Respondent in Tribunal below

Vs.

1. Sumathi

2.Minor Kabir Kamesh
(Minor 2nd respondent is rep.
by his next friend and mother Sumathi)

3. Begam

4. Thilshath

5. Jerina

6. V. Periyasamy

... Respondents/Petitioner
1 to 5/1st Respondent

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the award and decree dated 26.11.2018 made in MCOP No.647 of 2017 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Krishnagiri.

For Appellant : Mr. A. Dhiraviyanathan
For Respondents 1 to 5 : Mr. V.Kumaravelan
R6 : No Appearance

J U D G M E N T

Feeling aggrieved with the award passed by the Motor Accidents Claims Tribunal(Principal District Court), Krishnagiri

in MCOP No.647 of 2017, the Insurance Company has filed this Appeal.

2. The respondents 1 to 5 herein had filed a claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.35,00,000/- for the death of one Shafi, who had met with a road accident on 18.02.2016. The deceased is the husband of the first respondent, father of the 2nd respondent, son of the 3rd respondent and brother of the respondents 4 and 5,.

3. According to the claimants, on the date of accident, at about 4.00 p.m., while the deceased was riding a two wheeler bearing Registration No.KA.08/L.6469 from Varattanapalli to Kuppam Road, the offending lorry bearing Registration No.TN 48/K 6567, owned by the 6th respondent herein, dashed against the two wheeler of the deceased and caused his death. According to the claimants, the accident has taken place due to the rash and negligent act of the driver of the lorry. The further case of the claimants is that the deceased was working as a JCB operator in a Quarry at Andhra Pradesh and earning Rs.25,000/- per month. At the time of accident, the deceased was 30 years old. The deceased was the sole bread winner of the family. The first claimant is the wife of the deceased and the entire claimants are depending upon the income of the deceased and hence, they filed the claim petition seeking compensation.

4. The claim petition has been contested by the appellant, who is the Insurer of the lorry, inter alia contending that they are not liable to pay the compensation as there is no valid licence for the driver of the lorry on the date of accident. It was further contended that only due to the negligent act of the deceased, the accident was taken place.

5. In order to prove the case of the claimants, they examined two witnesses on their side and also marked as many as 16 exhibits. On the side of the respondents, neither any witness nor exhibits have been marked.

6. The Tribunal, after considering the materials available on record, has come to a conclusion that the accident has been taken place only due to the negligence of the driver of the lorry and on the date of occurrence, the lorry was insured with the appellant herein. So far as the quantum of compensation is concerned, the Tribunal has taken the monthly income of the deceased as Rs.10,000/- per month and after deducting the 1/4 from his salary for personal expenses of the deceased, added the future prospect at 40% and by applying the multiplier of 17 fixed the loss of dependency as Rs.21,42,000. Apart from that, the Tribunal has awarded a sum of Rs.40,000/- to the loss of consortium, Rs.15,000/- to the loss of estate and Rs.15,000/-

towards funeral expenses and totally awarded a sum of Rs.22,12,000/-. Now, aggrieved over the same, the Insurance Company is before this Court with this appeal.

7. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 5.

8. There is no serious dispute regarding the finding of the tribunal on negligence. The primordial contention of the Appellant/Insurance Company is that the respondents 4 and 5/claimants 4 and 5 are unmarried sisters of the deceased and they will not come under the purview of the legal representatives, hence, they are not entitled to claim compensation. In the said circumstances, the respondents 1 to 3, who are the wife, son and mother of the deceased, alone are entitled to claim compensation. In that event, the deduction towards the personal expenses of the deceased should be 1/3 as per the judgment of the Hon'ble Supreme Court in the case in Sarla Verma and others /Vs/ Delhi Transport Corporation and another reported in 2009 (6) SCC 121. But, the Tribunal without considering the same has made 1/4 deduction and wrongly arrived at a monthly income of the deceased at Rs.7500/- per month. The learned counsel appearing for the appellant prayed the Court to reconsider the quantum awarded towards the loss of dependency.

9. Per contra, the learned counsel appearing for the respondents 1 to 5 /claimants would submit that, the respondents 4 and 5 are unmarried sisters and they were wholly depending upon the deceased as he was the sole bread winner of the family and therefore, they also come into the purview of the legal representatives as contemplated under Section 166 of the Motor Vehicles Act and they can maintain the claim petition. The Tribunal has rightly considered the same and awarded compensation. He would further submit that admittedly the above issue was not raised before the Tribunal and for the first time, the appellant raising the issue before this Court, which is not permissible under law.

10. I have considered the rival submissions and perused the materials available on records carefully.

11. The one and only issue to be decided in this appeal is whether the claimants/respondents 4 and 5, who are unmarried sisters of the deceased can be considered as the legal representatives of the deceased and entitle to maintain a petition under Section 166 of the Motor Vehicles Act seeking compensation. Section 166 of the Motor Vehicles Act provides for making application for compensation by all the legal representatives of the deceased. Hence, not only the

dependents, the legal representatives of the deceased are also entitled to claim compensation. Legal representative is a person, who suffers on account of death of a person in a motor vehicle accident and it is not confined only to wife, parents and children. The Hon'ble Supreme Court in a judgment reported in 2007(1) TN MAC 385 in the case in Smt.Manjuri Bera /vs/ Oriental Insurance Company Ltd and another, held as follows:

"11. The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

12. According to Section 2(11) of CPC, "legal representative" 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. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996, i.e. under Section 2 (1) (g).

13. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique, AIR 1989 SC 1589, the definition contained in Section 2(11), CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr., AIR 1987 SC 1690, a legal representative is one who suffers on account of death of a person due

to a motor vehicle accident and need not necessarily be a wife, husband, parent and child. "

12. Recently the Hon'ble Supreme Court in its Judgment in National Insurance CO.Ltd., /vs/ Birender and others reported in 2020 (1) TN MAC 182 (SC), relying upon the Judgment in Manjuri Bera(supra) has held as follows:-

" In paragraph 15 of the said decision, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H.Kapadia, as His Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to Compensation". The Compensation constitutes part of the estate of the deceased. As a result, the Legal Representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos.1 & 2 (Claimants) even though they are major sons of the deceased and also earning."

13. The Hon'ble Supreme Court in a case in Gujarat State Road Transport Corporation, Ahmedabad /vs/ Ramanbhai Prabhatbhai and another reported in 1987 (3) SCC 234 has held that in Indian Family system, all the brothers and sisters are living together and totally depending on the bread winner of the family. Therefore, there is no justification in denying compensation to them in the cases arising out of the motor vehicles accidents. The relevant portion of the judgment reads as follows :-

" 13..... We should remember that in an Indian Family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act 1855 which as we

have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhani Khimji Vira V. Chaturbhai Taljabhai and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased."

14. Considering the above principle laid down by the Hon'ble Supreme Court, the unmarried sisters, who are class II heirs are also entitled to claim compensation. Admittedly, the respondents 4 and 5 are unmarried sisters of the deceased. It is also not disputed that the deceased was the sole bread winner of the family, and the respondents 4 and 5 were also living along with the deceased and depending upon the earning of the deceased at the time of his death. Hence, they are also entitled for compensation.

15. That apart, as rightly contended by the learned counsel appearing for the claimants, the above said plea was not raised before the Tribunal and very first time, the Insurance Company has raised the said issue before this Court. The Tribunal has rightly fixed the compensation and I find no illegality in the said order. In the said circumstances, I find no merit in the Appeal and consequently, the appeal is liable to be dismissed.

16. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company is dismissed. The award of the Tribunal is upheld. The entire compensation as calculated by the Tribunal, shall be deposited by the appellant/Insurance Company after deducting the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, it is for the claimants to move a petition before the Tribunal for withdrawing the said amount as apportioned by the Tribunal. No costs. Consequently, Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To

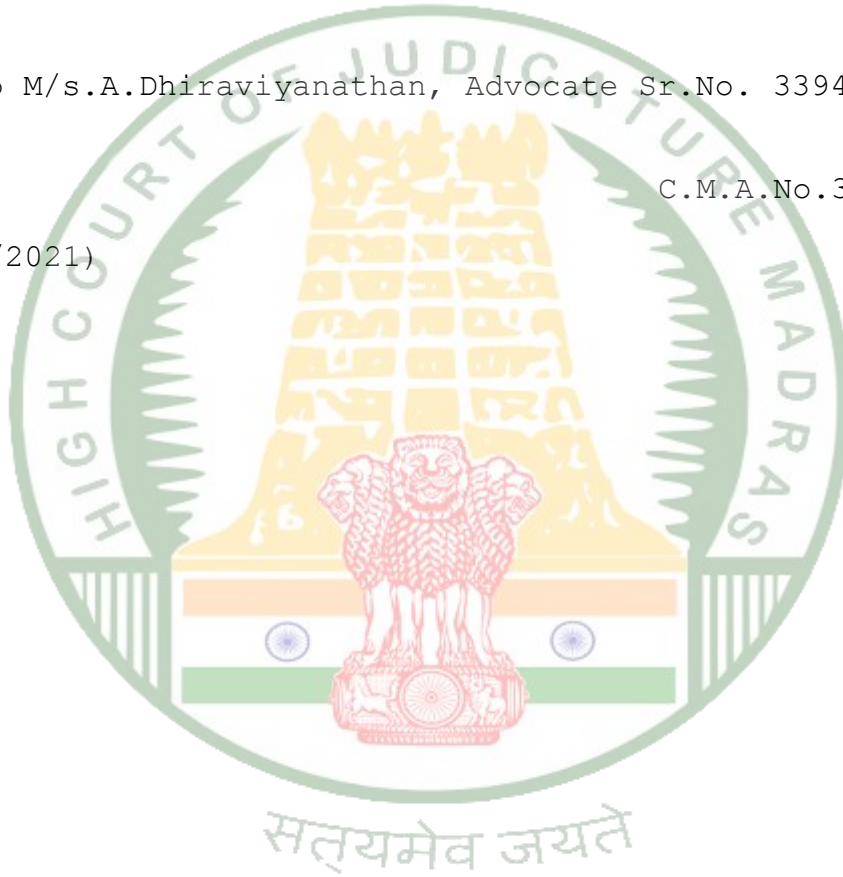
1.The Principal District Judge,
The Motor Accidents Claims Tribunal,
Krishnagiri.

Copy to:
The Section Officer,
V.R Section, High Court,
Madras.

+1 cc to M/s.A.Dhiraviyanathan, Advocate Sr.No. 33944

C.M.A.No.3453 of 2019

KK (CO)
RMP (07/04/2021)



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