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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

CMA. No.2396 of 2012

1.Maariyammal,

2.Vasanthi,

3.Subramani, ... Appellants / Petitioners

..VS..

1.J.Saravanan,

2.The Divisional Manager,

The New India Assurance Company Limited,

No.1, Officers Line, CSI Building,

Vellore.

... Respondents / Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.06.2012 in M.C.O.P.No. 462 of 2009, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Vellore.

For Appellant : Mr.M.Sivakumar for Mr.C.Prabakaran

For Respondents : Mr.M.G.Anandan for R2

No Appearance for R1

JUDGMENT

"This matter is heard to Virtual Hearing"

Dissatisfied with the judgment and decree, dated 26.06.2012, passed by the tribunal dismissing the Claim Petition, the claimants are before this Court to set aside the judgment and decree and for compensation.



2. It is the case of the claimants/appellants herein that on 10.03.2009 at about 6.00 p.m, the deceased P.Murugan was walking on the left side of the road at Karasamangalam road opposite to the church, at that time, an auto bearing Reg.No. TN-23-AD-6571 driven by its driver towards north to south, came in a rash and negligent manner at high speed and dashed against the deceased and caused grievous head injury. The deceased was immediately taken to the Vellore Government Hospital and then admitted to Government Hospital, Chennai and subsequently died in the Hospital. The appellants filed a claim petition before the tribunal, claiming compensation of Rs.25,00,000/- for the death of their brother P.Murugan, who died in a motor accident. The tribunal after analyzing both oral and documentary evidences, has come to the conclusion that the claimants are not solely depending on the deceased Murugan and are also not legal heirs of the deceased. On the said ground, the tribunal has dismissed the claim petition filed by the claimants/appellants herein.

3. Aggrieved over the same, the claimants/ appellants have preferred the present appeal to set aside the Judgment and decree of the Tribunal and for compensation.

4. The learned counsel appearing for the appellants/Claimants, the tribunal ought to have accepted the Relationship Certificate Ex.P6 issued by the Revenue Authority to prove that the Claimants are sisters and brother of the deceased and they are depending upon the income of the deceased. The Claim Petition was filed by the sisters and brother of the deceased as in the capacity of the legal representative as the deceased remains unmarried till his death, hence the said claim is maintainable as per the M.V.Act. Furthermore, the tribunal failed to award compensation under the heads of Love and affection, future loss of Income, transport charge and funeral expenses etc.

5. On the other hand, the learned counsel appearing for the 2nd respondent/ Insurance company denied the mode of accident as narrated by the appellants/claimants and also denied the negligence on the part of the driver of the insured vehicle. Furthermore, the claimants are aged more than 47 years and they are earning members and they never dependents of the deceased. The learned counsel for the 2nd respondent/ Insurance company submitted that the claimants are not legal heirs of the deceased



and therefore the claimants are not entitled for the compensation and hence the order of dismissal by the Tribunal does not require any interference by this Court.

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6. Heard the learned counsel appearing for the appellants/ claimants and the learned counsel appearing for the 2nd respondent/ Insurance Company and perused the materials available on record.

7. Before the Tribunal, witnesses P.W.1 & P.W.2 were examined and Exhibits P1 to P7 were marked on the side of the claimants whereas R.W.1 & R.W.2 were examined and exhibits R1 to R4 were marked on the side of the respondents.

8. According to the learned counsel for the claimants/appellants the claimants are sisters and brother of the deceased and they are dependants of the deceased for their lively hood, without any basis, the tribunal has wrongly rejected the claim petition. The other contention of the appellants is that in the absence of any contra evidence to disprove the relationship of the appellants with the deceased Murugan, the tribunal ought not to have dismissed the claim petition. In support of his arguments, the learned counsel for the appellants placed reliance of the judgment of this Court reported in 2013 (1) TNMAC 290 in the case of Division Manager, New India Assurance Co.Ltd, Vellore Vs.G.Selvi & Others. The relevant paragraph relied upon the learned counsel for the appellants is extracted hereunder;

30 . It is true that the term 'legal representative' has not been defined under the Motor Vehicles Act. But, in the decision of Hon'ble Apex Court in Gujarat State Road Trans. Corpn. v. Ramanbhai Prabhatbhai, 1987 ACJ 561 (SC), it is observed that, "In Indian society brothers, sister? and brothers' children, etc., live together and they are dependent upon the breadwinner of the family".

9. In the present case on hand, no materials were placed before the tribunal to prove that the appellants were living together with the deceased. Based on Ex.P6/Relationship Certificate marked by the appellants/claimants, the tribunal has observed that the claimants/appellants herein are not dependents



of the deceased Murugan and also not depending on the income of the Murugan. Therefore, it is clear that the appellants who are sisters and brother are not solely depending on the deceased Murugan. Further document viz., Ex.P6 is only a Relationship Certificate issued by the Tahsildar and no other documents were marked before the tribunal to substantiate their claim that they were dependents of the deceased. In the absence of any evidence to show that they lived together with the deceased till the date of accident, the claim made by the appellants cannot be accepted. The tribunal has also rightly rejected the claim of the appellants. Therefore, the decision cited supra relied upon the appellants will no longer helpful to the appellants.

10. The other contention of the appellants is that they are entitled for compensation under the heads Loss of Love and Affection and Funeral Expenses. The learned counsel appearing for the 2nd respondent/Insurance Company has not seriously disputed for awarding compensation to the appellants under the said heads. Hence, a sum of Rs.75,000/- (Rs.25,000/- each) is granted to the claimants under the head 'Loss of Love and Affection and a sum of Rs.5,000/- towards 'Funeral Expenses'.

11. In the result, this Civil Miscellaneous Appeal is partly allowed, by awarding a total amount of compensation of Rs.80,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

12. The 2nd respondent/ Insurance Company shall deposit the compensation amount, as awarded by this Court, along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. On such deposit being made, the appellants are permitted to withdraw the amount as per the apportionment fixed by this Court, on filing appropriate applications before the tribunal. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.5136

CMA.No.2396 of 2012

VG-II(CO)
SB(09/11/2021)