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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 29-04-2021

Judgment pronounced on : 01-06-2021

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

Civil Miscellaneous Appeal No. 3264 of 2019

and

Cross Objection No. 20 of 2021

C.M.A. No. 3264 of 2019

Saroja

.. Appellant/4th Respondent

Versus

1. Parvathy

2. Devarajan

3. Perumal

4. G. Saravanan

.. Respondents 1 & 2/Claimants

.. Respondents 3 & 4/Respondents 1 & 2

5. The Branch Manager

United India Insurance Company Limited

Branch Office

No.11-A, M.C. Road

Ambur, Vellore District

...5th Respondent/3rd Respondent

Cross-Objection No. 20 of 2021

The Branch Manager

United India Insurance Company Limited

Branch Office

No.11-A, M.C. Road

Ambur, Vellore District

.. Cross Objector/3rd Respondent

Versus

1. Parvathy

2. Devarajan

3. Perumal

4. G. Saravanan

5. Saroja

.. Respondents/Claimants & Respondents 1 to 4

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 28.09.2018 made in MCOP No. 91 of 2016 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Krishnagiri.



CMA No. 3264 of 2019

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For Appellants : Mr. R. Ganesan
for Mr. V. Kumaravelan

For Respondents : Mr. V. Lakshmi Narayanan
for Mr. E. Kannadasan for RR1 and 2

Mr. S. Arun Kumar for R5
Respondents 3 & 4-exparte

Cross-Objection No. 20 of 2021

For Cross Objector : Mr. S. Arun Kumar

For Respondents : Mr. V. Lakshmi Narayanan
for Mr. E. Kannadasan for RR1 and 2

Mr. R. Ganesan
for Mr. V. Kumaravelan for R5
Respondents 3 & 4-exparte

COMMON JUDGMENT

R. SUBBIAH, J

The appellant in this Civil Miscellaneous Appeal is the fourth respondent in MCOP No. 91 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Krishnagiri. She is the mother in law of the deceased Vanitha, who had lost her life in a motor accident that had taken place on 05.10.2014. The parents of the deceased Vanitha are the Claimants, who have filed MCOP No. 91 of 2016 and respondents 1 and 2 in C.M.A.No.3264 of 2019. Aggrieved by the apportionment of compensation amount in between the appellant and the respondents 1 and 2 at the ratio of 1/3rd each, in and by the award dated 28.09.2018 passed by the Tribunal, the present appeal has been filed by the appellant.

2. A Cross Objection in Cross.Obj.No.20 of 2021 had also been filed before this Court by the Insurance Company, questioning the compensation amount as awarded by the Tribunal in favour of the respondents 1 and 2 in C.M.A.No.3264 of 2019, apart from raising other grounds on the other aspects of the award passed by the Tribunal.

3. The brief facts which are necessary to dispose of this appeal and the cross objection, are as follows.

4. On 05.10.2014 at about 14.00 hours, the son of the appellant herein, namely deceased Arumugam was driving the two wheeler bearing Registration No. TN 24 S 6180 having his wife Vanitha and son - Karthikeyan as pillion riders, on the extreme



left side of the Krishnagiri to Dharmapuri Main Road. While they were nearing a place called Nathakottai, opposite to HP Petrol Bunk, a lorry bearing Registration No. TN 23 W 0355, which was driven by its driver in a rash and negligent manner, hit on the rear side of the two wheeler, as a result of which, the deceased Arumugam lost his balance and fell down along with his wife and minor son and sustained fatal injuries. Thus, all the occupants of the two wheeler died on the spot. Hence, the respondents 1 and 2, who are the parents of the deceased Vanitha, have filed MCOP No. 91 of 2016, claiming compensation of Rs.75,00,000/- as against the owner of the lorry and its insurer. In the said claim petition, the appellant herein, who is the mother-in-law of the deceased Vanitha, was shown as fourth respondent. On completion of trial, the Tribunal has passed an award for a sum of Rs.57,87,500/- as compensation and apportioned the amount equally among the appellant, respondents 1 and 2 viz., Rs.19,29,000/- payable to the respondents 1 and 2 and Rs.19,29,500/- to the appellant herein. Questioning the apportionment of compensation amount in the ratio of 1/3rd each, the present appeal in C.M.A.No.3264 of 2019 is filed by the appellant, who is the fourth respondent in M.C.O.P.No.91 of 2016.

5. Before the Tribunal, the appellant herein/fourth respondent in the Claim Petition filed a counter statement by taking a specific stand that, she is the surviving Class II legal heir of the deceased Vanitha as her mother-in-law. It was further stated in the counter statement that she was depending on the income of the deceased Vanitha from the date of her marriage with her son Arumugam, who also died in the same accident. The appellant was living along with the deceased Vanitha till her death in the accident. Even though she is the daughter of the respondents 1 and 2/claimants, since she was given in marriage to her son Arumugam, from that date, the appellant, her daughter in law and son were living as a joint family under one roof. According to the appellant, as per Hindu Succession Act, the appellant is the Class II legal heir of the deceased Vanitha. Since the appellant, who is the Class II legal heir is alive, the other relatives, who are not dependants and legal representatives of the deceased Vanitha, are not entitled for any compensation. Moreover, the respondent No.2, father of the deceased Vanitha is a retired Headmaster and was receiving pension of Rs.30,000/- per month. That apart, he owns 8-1/2 acres of land in his name. From the said land, the respondent No.2 is earning a sum of Rs.50,000/- per month. Furthermore, apart from the deceased Vanitha, respondents 1 and 2 have two other children, namely Agila, Wife of Elangovan and Thirumal @ Guru. The son-in-law of the respondents 1 and 2, namely Elangovan was working in Ashok Leyland Company at Hosur and earning Rs.40,000/- per month. The son of the respondents 1 and 2 Thirumal is employed as a Sales representative in Banner Cloth and earns not less than Rs.25,000/- per month. Their daughter-in-law, namely Shanthi is also working as Computer Operator in the office of the District Collector, Krishnagiri and earning Rs.20,000/- per month. While so, the respondents 1 and 2 cannot be termed as financially dependants on the



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deceased Vanitha. On the other hand, the appellant has no independent source of income. She has also lost the income of her son due to his death in the accident. Therefore, the appellant is entitled for the entire compensation amount awarded by the Tribunal and hence, apportionment of the compensation amount between the appellant and the respondents 1 and 2 in equal proportion is not proper. Thus, she prayed for awarding the entire compensation amount in her favour.

6. The Tribunal has placed reliance on Ex.P-6, namely the judgment delivered by the District Munsif Court, Krishnagiri, in the suit in O.S.No.48 of 2015 filed by the appellant herein, as against the respondents 1 and 2, in which, the District Munsif Court directed the official defendants therein to issue Legal Heirship Certificate in favour of the appellant herein as the legal heir of the deceased Vanitha along with her parents, namely the respondents 1 and 2 herein, thereby, rejecting the case of the appellant herein that she alone is the legal heir of the deceased Vanitha. In the said judgment, the District Munsif Court also recorded a finding that the respondents 1 and 2 are also entitled for half of the amount from the death benefits and the accident claims of the said Vanitha.

7. Based on the said judgment, the Tribunal had come to the conclusion that the appellant herein as well as the respondents 1 and 2 herein, are the legal heirs of the deceased Vanitha and all of them are entitled for compensation amount in equal proportion. By coming to such a conclusion, the Tribunal had passed an award for a sum of Rs.57,87,500/- and apportioned the amount equally between the appellant and the respondents 1 and 2 herein. Aggrieved by the same, the present appeal has been filed by the appellant/fourth respondent, who is the mother-in-law of the deceased.

8. The learned counsel appearing for the appellant submitted that, originally, the appellant herein has filed a separate claim petition praying for compensation for the death of her daughter-in-law, i.e. the deceased Vanitha, in M.C.O.P.N.578 of 2014 on the file of the Motor Accident Claims Tribunal at Tirupattur. In the meanwhile, the parents of the deceased Vanitha have filed the instant petition in M.C.O.P.No.91 of 2016 on the file of the Motor Accident Claims Tribunal, Krishnagiri, praying for compensation for the death of their daughter/deceased Vanitha, in which the appellant was shown as the fourth respondent. Hence, the appellant herein had not pressed for the relief sought for in M.C.O.P.N.578 of 2014 on the file of the Motor Accident Claims Tribunal at Tirupattur and contested M.C.O.P. No. 91 of 2016.

9. It is the specific stand of the appellant herein before the Tribunal that she is the surviving Class-II legal heir as per Hindu law, she is totally depending on the income of the deceased Vanitha and hence the other relatives of the deceased Vanitha, who are not dependants on her income, are not entitled for any compensation. But, the Tribunal, by placing reliance on the judgment passed in O.S.No.48 of 2015 (Ex.P-6), had come to



the conclusion that the appellant as well as the respondents 1 and 2 are entitled for compensation amount equally, since in the said judgment, there was a finding to the effect that the respondents 1 and 2 are also entitled for 1/2 of the amount from the death benefits and the accident claims of the said Vanitha. In this regard, the learned counsel appearing for the appellant had drawn the attention of this Court to Section 175 of the Motor Vehicles Act, 1988 and submitted that Section 175 completely ousts the jurisdiction of the Civil Courts insofar as deciding any question regarding the determination of the claim arising out of a motor accident. Therefore, the findings rendered by the District Munsif Court in O.S.No.48 of 2015 is without jurisdiction and the same is illegal, void, non-est and inoperative, and therefore, inexecutable for all practical purposes. But, in the instant case, the Tribunal, by solely relying upon Ex.P-6, abdicated its judicial function. In this context, the learned counsel appearing for the appellant invited the attention of this Court to the judgment of the Apex Court, reported in the case of Kiran Singh and others Vs. Chaman Paswan and others, reported in AIR 1954 SC 340, wherein it has been held that a decree passed by a Court without jurisdiction is a nullity and the defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by the consent of parties.

10. The learned counsel appearing for the appellant, by relying upon a decision of the Supreme Court in the case of Balvant N. Viswamitra and others vs. Yadav Sadhashiv Mule (dead) through legal heirs, reported in 2004 (8) SCC 706, submitted that in the said judgment, it has been reiterated that the defect in the jurisdiction of the Court, goes to the root of the matter and strikes at the very authority of the Court to pass a decree or make an order, and such defect had always been treated as fundamental and a decree or order passed by a Court or authority having no jurisdiction, is to nullify the validity of such decree or order, which can be challenged at any stage, even in execution or collateral proceedings. In this case, since the decree passed under Ex.P-6 suffers from the vice of "coram-non-judicis", it cannot be considered for any purpose by any Court. Thus, the order passed by the Civil Court lacks jurisdiction. However, the Tribunal had solely relied upon Ex.P-6 and arrived at a finding that the appellant as well as the respondents 1 and 2 are the legal heirs of the deceased Vanitha, and therefore, they are entitled for equal share in the compensation amount.

11. Further, the Tribunal had come to the conclusion as if the appellant has not challenged the decree passed in O.S.No.48 of 2015 (Ex.P-6) by way of appeal. But the fact remains that the judgment and decree passed in O.S.No.48 of 2015 were reversed in the First Appeal in A.S.No. 39 of 2017 by the Principal Sub-Court, Krishnagiri in the appeal filed by the appellant herein. Now, as against the said judgment, Second



Appeal has been filed by the respondents 1 and 2 herein and it is pending before this Court. Even any decision that might be impending in the Second Appeal, is of no use, as it must have been a product of "corum-non-judice" and it would not help any party or any Court to decide the issues involved in this appeal. Similarly, the District Munsif Court had no jurisdiction to decide as to who are all entitled to compensation, in view of the bar under Section 175 of the Motor Vehicles Act.

12. The learned counsel for the appellant also invited the attention of this Court to Section 166 (1) (c) of the Motor Vehicles Act and contended that an application for compensation can be made, where the death has resulted from the accident, by all or any legal representatives. The word "legal representatiave" is not defined in the Motor Vehicles Act. The definition for "legal representative" is provided only in Section 2 (11) of the Civil Procedure Code (CPC). Section 2 (11) says that " '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". It is an exclusive definition incorporated under the Code of Civil Procedure only for the purposes of Order XXII to implead the legal representatives in the suits in the case of death of a plaintiff or a defendant, if the cause of action survives in order to set aside the abatement and continue the proceedings. The general procedures for impleadment is not applicable to the substantive special law, as the procedures are contemplated in Section 166 of the Motor Vehicles Act and the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989, where there is no prescription as to who are all entitled to compensation. Therefore, the respondents 1 and 2 are not entitled to claim compensation by claiming that they are the legal representatives of the deceased Vanitha.

13. As a next fold of submission, the learned counsel for the appellant submitted that, the appellant being the mother-in-law of the deceased, she is the one and only surviving legal heir of the deceased to get the compensation amount. On the other hand, the respondents 1 and 2 also claimed compenstaion on the ground that they are also the legal heirs of the said deceased Vanitha. In this regard, the learned counsel for the appellant invited the attention of this Court to Section 15 of the Hindu Succession Act, which reads as follows:

"Section 15: General rules of succession in the case of female Hindus: -- (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,--

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father;

and



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(e) lastly, upon the heirs of the mother,

(2) Notwithstanding anything contained in sub-section (1)--

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter), not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

14. Thus, the learned counsel for the appellant submitted that under Section 15 (1) (b) of the Hindu Succession Act, the appellant is the legal heir of husband of Vanitha and as such, as a mother-in-law of the deceased Vanitha, she is the sole legal heir of the deceased Vanitha, and hence, she alone is entitled to get the compensation and Section 2 (11) of the Code of Civil Procedure has got no relevance. Section 15 (1) (b) of the Hindu Succession Act would exclude the parents of the deceased with all sense that the daughters, on their marriage are going to the Gothra of their husband and therefore, the mother-in-law and parents-in-law are nearer in degree of preference having preferential place than the parents. Thus, the learned counsel for the appellant prayed this Court to set aside the apportionment adopted by the Tribunal and allow this appeal by awarding the entire compensation amount in favour of the appellant.

15. Countering the above submissions made by the learned counsel for the appellant, the learned counsel appearing for the respondents 1 and 2 submitted that, first of all, the Motor Vehicles Act is not concerned with the issue as to who is the legal heir, but only consider as to who is the legal representative. This very aspect had been gone into by the Supreme Court as well as by the High Court in several cases. In this regard, the learned counsel for the respondents 1 and 2 relied upon the judgment of the Supreme Court in the case of Gujarat State Transport Corporation Vs. Ramanbhai, reported in AIR 1987 SC 1690, wherein it has been held as follows:-

"9. 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



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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 defines '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 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 state 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 heirs. Both the persons or person 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. This section in a way is a substitute to the extent indicated above for the provisions of Section 1A of the Fatal Accidents Act, 1855 which provides that "every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased". While the Fatal Accidents Act, 1855 provides that such suit



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shall be for the benefit of the wife, husband, parent and child of the deceased, Section 110-A(1) of the Act says that the application shall be made on behalf of or for the benefit of the legal representatives of the deceased. A legal representative in a given case need not necessarily be a wife, husband, parent and child. It is further seen from Section 110-B of the Act that the Claims Tribunal is authorised to make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid. This provision takes the place of the third paragraph of Section 1A of the Fatal Accidents Act, 1855 which provides that in every such action, the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought. Persons for whose benefit such an application can be made and the manner in which the compensation awarded may be distributed amongst the persons for whose benefit the application is made are dealt with by Section 110-A and Section 110-B of the Act and to that extent the provisions of the Act do supersede the provisions of the Fatal Accidents Act, 1855 in so far as motor vehicles accidents are concerned. These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 was "new in its species, new in its quality, new in its principles, in every way new" the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new damagers require new strategies and new remedies."

16. For the same proposition, the learned counsel for the respondents 1 and 2 also relied upon the judgment of the Chattisgarh High Court, in the case of NIIC vs. Smt. Jasinta Kujur and others, reported in AIR 2007 Chattisgarh 107, wherein it was reiterated that legal representative means a person who in law represents the estate of a deceased, almost in similar terms as legal representative under Section 2(1) of the Arbitration and Conciliation Act, 1996.

17. By relying upon the above judgments, learned counsel for the respondents 1 and 2 submitted that, it is abundantly clear that any person who is the legal representative, can make a claim in terms of the provisions of The Motor Vehicles Act. Further, in the claim petition, the respondents 1 and 2 herein have specifically pleaded that they are dependents on the



deceased Vanitha. The first respondent-Parvathi being the mother of the deceased Vanitha, went into the witness box and deposed that Vanitha, her husband and the child were residing with the claimants. She had also stated that they were dependent on the income of the deceased Vanitha. She also further stated that the said Vanitha took care of their day-to-day needs by living with them in one roof. Her categorical assertion was not displaced during cross-examination, either by the appellant or by the Insurance Company. Since the testimony of P.W.1 remains unrebutted, her testimony has to be given due credence. In support of this contention, the learned counsel for the respondents 1 and 2 relied upon the following judgments:

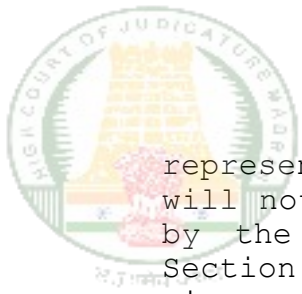
- (i) 1893 (6) R 67 (Browne V.Dunn Vs. Lord Chancellor Herschell);
- (ii) AIR 1961 Calcutta 359 (A.E.G.Carapiet Vs. Derderian);
- (iii) 1998 (3) SCC 561 (State of U.P. Vs. Nahar Singh);
- (iv) AIR 2001 SC 3207 (Rajinder Prasad Vs. Darshana Devi);
- (v) AIR 2011 SC 545 (Atluri Brahmanandam Vs. Anne Sai Bapuji);
- (vi) AIR 2013 SC 1204 (Laxmibai and another Vs. Bhagwanthbuva), and
- (vii) 2014 Cri.L.J. 3240 (Paulmeli and another Vs. State of Tamil Nadu).

18. The learned counsel for the respondents 1 and 2 further submitted that the right of parents to claim for the death of the married daughter, is no more res-integra, and recently, in the case of Kavitha and others Vs. Murugan and others, in C.M.A.No.2591 of 2016 and C.M.A.No.1795 of 2016, dated 01.06.2017, it has been held by this Court that the dependency of a daughter need not always be financial dependency, but it can also be any other dependency like physical dependency, moral dependency, emotional dependency, psychological dependency etc., and the law recognise not only parameters which can be arithmetically calculated, but also other parameters which can be notionally estimated, say for example, loss of enjoyment of amenities and loss of expectation of life, for which, there is no numerical calculations readily available.

19. The learned counsel for the respondents 1 and 2 also relied upon the decision of this Court in the case of Glory Bai and another Vs. S.K.A.Noorjahan Beevi and others, reported in 2011 (2) LW 460, wherein this Court held that the dependency of the parents does not cease on the marriage of their daughter and if such a view is permitted, it would amount to treating the women as property given in marriage, thus, women are given equal rights in our Constitutional scheme. Therefore, the learned counsel for the respondents 1 and 2 submitted that since the deceased had been given in marriage, the same does not mean that the parents are not entitled for compensation.

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20. With regard to the submission made by the learned counsel for the appellant that the definition of "legal



representative" as provided in Code of Civil Procedure (CPC), will not be applicable to the Motor Vehicles Act, it is replied by the learned counsel for the respondents 1 and 2 that, Section 176 read with Section 211 of the Motor Vehicles Act gives powers to the State Government to make Rules for the purpose of carrying into effect the provisions of Sections 165 to 174 therein. The State Government has also made the Rules in the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989 in which Rule 2(c) defines the term "legal representative" by stating that the "legal representative" shall have the meaning assigned to it under Clause (11) of Section 21 of the Code of Civil Procedure, 1908 (Central Act V of 1908)". The learned counsel for the respondents 1 and 2 therefore submitted that the respondents 1 and 2 are also entitled for the compensation as parents of the deceased Vanitha.

21. The learned counsel appearing for the Insurance Company/cross-objector submitted that, since a person is a legal representative of the deceased, who died in a motor accident, he/she cannot be automatically entitled for compensation, unless it is proved that he/she is the dependant of the deceased. In this regard, the learned counsel relied on the Judgments of the Apex Court reported in 2009 ACJ 1298 (Sarla Verma and others Vs. Delhi Transport Corporation and another) and 2007 (1) TN MAC 385 (SC) (Manjuri Bera Vs. Oriental Insurance Co. Ltd. and another) and submitted that admittedly, the deceased was not living with their parents and they were not receiving any amount from her during her lifetime. The parents of the deceased were living separately and therefore, the cases relied upon by the learned counsel for the respondents 1 and 2 will not be applicable to the facts of the present case. In the instant case, since the claimants/parents of the deceased are not dependent, the claim for pecuniary loss cannot be entertained. If at all they are entitled for any compensation, it is only for "loss of love and affection". Thus, he prays for setting aside the award of the Tribunal.

22. Keeping in mind the submissions made on either side, we have carefully perused the entire materials available on record. The common question that arise for our consideration in this case is

(i) Whether the Civil Court can render a finding with respect to the entitlement of the parties to get compensation in the claim petition pending before the Tribunal ?

(ii) Whether the Law of Succession is the basis for awarding compensation in a motor accident claim ?

(iii) Whether a legal representative, who is not dependant on the income of the deceased, is entitled for compensation on the death of the deceased ? and

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(iv) whether the claimants/respondents 1 and 2, who are the parents of the deceased Vanitha can be construed as dependants of the deceased,



especially when their daughter was given in marriage to the son of the appellant ?

23. If these questions are answered, that would suffice to decide the issues involved in this case.

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24. Since all the questions are inter-related to each other, we are dealing with the same in common.

25. It is the main contention of the learned counsel for the appellant that the appellant is the mother-in-law of the deceased Vanitha and as such, she is the Class II legal heir. When she is alive, the other relatives of the deceased are not entitled to claim compensation, since they are not dependants on the income of the deceased. The learned counsel for the appellant submits that after the marriage, the deceased Vanitha was living along with the appellant, her son and grand son under one roof as a joint family. Hence, she is alone entitled for the entire compensation and as such, there cannot be any apportionment between the appellant and the respondents 1 and 2/parents of the deceased. But the Tribunal, by relying upon the judgment delivered by the District Munsif Court, apportioned the compensation amount and therefore, the judgment of the Tribunal insofar as it relates to apportionment of the compensation amount among the appellant and claimants 1 and 2, is liable to be set aside.

26. Keeping this submission, we have perused the Judgment and Decree dated 15.06.2016 passed in O.S. No. 48 of 2015 on the file of District Munsif, Krishnagiri in the suit filed by the appellant. In the judgment dated 15.06.2016, the Court had directed the official defendants therein to issue legal heir certificate to the appellant along with the parents of the deceased namely the respondents 1 and 2 herein as legal heirs of the deceased Vanitha. That apart, the District Munsif Court also recorded a finding to the effect that though the appellant herein is entitled to get Legal Heirship Certificate of the deceased Vanitha, the parents of the deceased were also to be given the death benefits and accident claim of Vanitha. The said Judgment was marked as Ex.P-6 before the Tribunal. The Tribunal, by relying upon the said judgment, had come to the conclusion that the appellant and respondents 1 and 2 herein are the legal heirs of the deceased Vanitha and therefore, all of them are entitled to the compensation amount. In our opinion, the said finding of the Tribunal is not legally sustainable for two reasons, namely:

(i) The jurisdiction of the Civil Court is barred under Section 175 of The Motor Vehicles Act, to entertain any question relating to any claim for compensation and it may be adjudicated upon by the Claims Tribunal for that area, and

(ii) The Legal Heirship Certificate is not the basis for making the claim under the Motor Vehicles Act.

27. With regard to the jurisdiction of the Civil Court, there is a bar under Section 175 of the Motor Vehicles Act. Section 175 reads as follows:-

"175. Bar on jurisdiction of civil courts -



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Where any Claims Tribunal has been constituted for any area, no civil court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

28. In our opinion, in the light of the bar contained under Section 175 of The Motor Vehicles Act, the finding rendered by the Tribunal with regard to the entitlement of compensation to the respondents 1 and 2, has no significance. The learned District Munsif had travelled beyond jurisdiction and rendered such finding. In this regard, it would be appropriate to reiterate the judgment relied on by the learned counsel for the appellant in the case of Kiran Singh and others Vs. Chaman Paswan and others, reported in AIR 1954 SC 340, wherein it has been held by the Apex Court that a decree passed without jurisdiction, will be a nullity and the defect of jurisdiction, whether pecuniary or territorial in respect of the subject matter strikes at the very authority of the Court to pass any decree and such defect cannot be cured by consent of parties. The learned counsel for the appellant also relied upon the decision in the case of Balvant N. Viswamitra and others Vs. Yadav Sadhashiv Mule (dead) through legal heirs, reported in 2004 (8) SCC 706, to contend that the defect in the jurisdiction of a Court goes to the root of the matter and such defect had always been treated as fundamental defect in jurisdiction of a Court. Since the findings rendered by the District Munsif Court, Krishnagiri, are without jurisdiction, the same cannot be taken as the basis for deciding the entitlement of compensation and apportioning the same among the appellant and respondents 1 and 2. Further, we find that the judgment of the Civil Court rendered in O.S.No.48 of 2015 was challenged by the appellant before the Subordinate Court and the said judgment of the District Munsif Court, was reversed, against which, the respondents 1 and 2 have filed Second Appeal before this Court.

29. Be that as it may. As rightly contended by the learned counsel appearing for the appellant, any decision that might be rendered in the Second Appeal will be of no use and it is the product of "quorum-non-judis". Therefore, we are of the opinion that the Tribunal ought not to have relied on the judgment of the District Munsif Court, Krishnagiri to decide the entitlement of compensation.

30. The next ground is whether the Law of Succession is having any role in deciding the claim petition. In this regard, it is appropriate to see Section 166 of The Motor Vehicles Act, which reads as follows:-

"166. Application for compensation:-

(1) An application for compensation arising out of an accident of the nature specified in subsection (1) of section 165 may be made-

(a) by the person who has sustained the



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injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

31. Section 166 (1) (c) of the Act uses the word "legal representative" and not legal heir. But it is the submission of the learned counsel for the appellant that the word legal representative has not been defined in the Motor Vehicles Act. The word legal representative is defined only under Section 2 (11) Code of Civil Procedure. Section 2 (11) reads as follows:-

"2. In this Act, unless there is anything repugnant in the subject or context:-

11. "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 whom the estate devolves on the death of the party so suing or sued;"

32. According to the learned counsel for the appellant, Section 2 (11) is an exclusive definition incorporated in Code of Civil Procedure only for the purpose of Order XXII to implead the legal representatives in the suits in case of death of a plaintiff or a defendant, if the cause of action survives in order to set aside the abatement and continue the proceedings. Therefore, the general procedures for implement are not applicable to the substantive special law, as in the procedures contemplated under Section 166 of The Motor Vehicles Act and the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989, there is no prescription as to who are all entitled to compensation. But we find that under the said Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989, the words "legal representative" had been dealt with. Rule 2 (c) therein reads as follows:-

"Legal Representatives" shall have the meaning assigned to it under clause (11) of Section 2 of the Code of Civil Procedure, 1908 (Central Act V of 1908)

33. The said Rules had been framed based on the power of the State Government to make Rules under Section 176 read with Section 211 of The Motor Vehicles Act. Therefore, it is appropriate to refer Section 176 of The Motor Vehicles Act, which reads as follows:-

"176. Power of State Government to make Rules under Sections 176 read with Section 211 of Motor Vehicles Act:

A State Government may make Rules for the



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purpose of carrying into effect the provisions of Sections 165 to 174, and in particular, such rules as may be provided for all or any of the following matters, namely:-

(a) The form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications:

(b) The procedure to be followed by a claim Tribunal in holding an inquiry under this chapter;

(c) The powers vested in a Civil Court which may be exercised by a claims Tribunal

(d) The form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and

(e) Any other matter, which is to be, or may be prescribed.

34. When Rules had been framed by virtue of the powers conferred under Section 176 of The Motor Vehicles Act under Rule 2 (c) in the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989, the legal representative shall have the meaning assigned to sub-section (11) of Section 2 of the Code of Civil Procedure, 1908 (Central Act V of 1908). Therefore, the submission made by the learned counsel for the appellant that the definition of the words "legal representatives" as envisaged under Section 2(11) of the CPC, will not apply to the claims made in the Motor Vehicles Act, is not sustainable. In this regard, it is also appropriate to refer to the decision relied on by the learned counsel for the respondents 1 and 2 in the case of Gujarat State Transport Corporation vs. Raman Bhat reported in AIR 1987 SC 1690, in which it was held that "The expression 'legal representative' has not been defined in the Act. Section 2 (11) of the Code of Civil Procedure, 1908 defines '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." In effect, it was held that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased.

35. Therefore, the submission of the learned counsel for the appellant that legal representatives defined under Section 2 (11) of the CPC, cannot be made applicable to the motor accident claims, does not hold good. Since Motor Vehicles Tribunal is concerned only about the legal representatives, all the submissions made by the counsel for the appellant based on the Succession Laws are irrelevant for our consideration. The relationship between the deceased and the claimants is totally immaterial. The legal representatives need not be a blood relative. Therefore, the submission made by the learned counsel for the appellant that the appellant is the only surviving Class II legal heir and she alone is entitled to the entire compensation amount payable to the deceased, cannot be accepted.



36. The next question that arises for consideration is that, since a person is a legal representative, whether such status alone will give rise to get an entitlement for compensation. The claimants have mainly made the claim based on the capacity as "legal representative" of the deceased Vanitha. The cardinal principle in Motor Accident Claims is to award compensation to the victim to the extent they have sustained loss, or in other words, what they would have gained from the deceased had she been alive. Therefore, mere status of legal representative alone is not a criteria for claiming compensation and there should be a dependency. This was the legal position reiterated by the Supreme Court in the case of Sarla Verma and others mentioned above. In the said judgment, in para No. 7, the Supreme Court has referred and discussed the judgment in the case of the General Manager, Kerala State Road Transport Corporation Vs. Susamma Thomas reported in 1994 ACJ 1 (SC). The relevant portion of the judgment in Kerala State Road Transport Corporation reads thus:-

"In fatal accident action, the measure of damages is the pecuniary loss suffered and is likely to be suffered by each dependant as a result of the death. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live upto the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.

The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years."

37. In the very same judgment in Sarla Verma Vs. Delhi Transport Corporation, in para No.13, the Supreme Court referred to the judgment in Fakeerappa Vs. Karnataka Cement Pipe Factory, reported in 2004 ACJ 699 (SC), wherein it has been held as follows:-

"What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon the circumstances of each case. The



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deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents would have been lesser and therefore, taking an overall view the Tribunal and the High Court were justified in fixing deduction."

38. By discussing the above two judgments in Sarla Verma case, the Supreme Court laid down the principles towards deduction of personal expenses inter-alia the significance of dependency in para No.14 as follows:-

"14. Though in some case the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra's case 1996 ACJ 831 (SC) the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third (1/3rd) where the number of dependent family members is 2 to 3; one fourth (1/4th) where the number of dependent family members is 4 to 6; and one-fifth (1/5th) where the number of the dependent family members exceeds six."

39. In Manjuri Bera vs. Oriental Insurance Company Limited reported in 2007 (1) TN MAC 385, it was held by the Supreme Court as follows:-

"16. Judged in that background where a legal representative, who is not dependant, files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall not be less than the liability flowing from Section 140 of the Act....."

Thus, in the above said case, the Supreme Court had awarded compensation only under Section 140 of the Motor Vehicles Act to the legal representative, who is not a dependant of the deceased.

40. In the case of Gujarat State Road Transport Corporation Vs. Ramanbhai, reported in AIR 1987 SC 1690, in para No.11, it has been held by the Apex Court as follows:-

"11. We should remember that in an Indian family, brothers, sisters and brothers's children and sometimes 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 vehicle accidents."

41. In National Insurance Company Limited Vs. Birender and others, reported in 2020 (1) TN MAC 182 = CDJ 2020 SC 028, it was held in para No.15 as follows:-

"15. The evidence on record in the present case would suggest that the claimants were working as Agricultural Labourers on contract basis and were earning meagre income In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her."

42. Thus, compensation was awarded by the Court in the above case after considering the earnings of the claimant as well as the fact that all of them were living in the same roof and the mother took care of the entire family.

43. Therefore, in all the above cases, the discussion made would show that dependency is the criteria to award compensation. Hence, mere status of legal representative alone is not sufficient to make a claim. Thus, the basis for entitlement for compensation is dependency. If a legal representative is not a dependant of the deceased, he is not entitled for compensation for loss of dependency. Whether the claimants are dependants or not, has to be examined only based on the evidence adduced in a particular case. So far as the present case is concerned, it is the submission of the learned counsel appearing for the respondents 1 and 2 that the respondents 1 and 2 were not only residing with the deceased Vanitha and her family, but were also dependants on her income. It is their further assertion that the deceased took care of the day-to-day needs of the respondents 1 and 2 by living with them under one roof. In fact, the first respondent entered into the box and deposed that deceased Vanitha and her husband and child were residing with the claimants. He has also stated that the deceased Vanitha was spending her salary for them. The categorical statement of the first respondent was not shattered during his cross-examination and not even a single question was posed or suggestion was made to PW1 denying his claim. The Insurance Company had not raised any such plea before the Tribunal. Though the Insurance Company had cross-examined the claimant twice, on both the occasions, there was no useful suggestion or anything contra elicited. It is settled law that, where a party fails to avail right of cross examination of witness, despite there being sufficient opportunity and testimony of such witness, remains unrebutted and unimpeached, then, in such circumstances, such testimony has to be given due credence. Therefore, considering the evidence, prima-facie, the respondents 1 and 2 proved their dependency. Therefore, we do not find any infirmity in awarding compensation to the claimants/respondents 1 and 2 herein based on the theory of dependency, which is the paramount consideration to be weighed while dealing with a claim



petition, claiming compensation before the Tribunal for death or bodily injury in a motor accident.

44. So far as quantum of compensation awarded by the Tribunal is concerned, it appears to be correct. We find deceased was working as a Teacher in a Government School. Based on Ex.P11 salary certificate, the Tribunal fixed Rs. 31,940/- as monthly income. Thereafter, by deducting 1/3rd Tribunal has fixed Rs.21,300/- as the monthly loss of contribution and by adding 50% towards future prospects and applying multiplier 15 based on the age of the deceased, who was 36 years old, awarded Rs. 57,87,500/- as total compensation. This includes a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards Funeral expenses, Rs.6,500/- towards transportation and Rs.80000/- towards filial compensation for the appellant and apportioned the amount among the appellant and respondents 1 and 2. We do not find any infirmity or irregularity in awarding such compensation. Therefore, the appeal filed by the appellant has to be dismissed by confirming the award passed by the Tribunal.

45. As far as Cross-appeal filed by the Insurance Company is concerned, in the light of our conclusion, sustaining the award passed by the Tribunal, we do not find any ground to accept the grounds raised in the cross-objection.

46. Accordingly, both the Civil Miscellaneous Appeal as well as the cross-objection are dismissed. No costs.

Sd/-

Deputy Registrar(AD II)

//True copy//

Sub Assistant Registrar

rsh

To

The Motor Accident Claims Tribunal
Additional District and Sessions Judge
Krishnagiri.

Copy To

The Section Officer
Vernacular Records Section
High Court, Madras.

+1cc to Mr.E. Kannadasan, Advocate SR.No.27337

+2cc to Mr.V. Kumaravelan, Advocate SR.No.27407

CMA No. 3264 of 2019

and

Cross Objection No. 20 of 2021