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C.M.A.Nos.2490/2006 & 1168/2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2022

DELIEVRED ON : 08.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.M.A.Nos.2490 of 2006 and 1168 of 2015
and
Cross Objection No.20 of 2009 in C.M.A.No.2490 of 2006
and
C.M.P.Nos.9404 of 2006 and 2840 of 2007 in
C.M.A.No.2409 of 2006

C.M.A.No.2490 of 2006 :

1.R.Thamizharasi

2.Minor Nesapriya

rep. by her next friend and
mother 1st appellant herein

... Appellants /
3rd parties in M.C.O.P.No.38 of 2003

Vs.

1.Arulmozhi

2.Abiramani

3.Minor Arulraja

rep. by his next friend
1st respondent herein

... Respondents 1 to 3/
Claimants in M.C.O.P.No.38 of 2003

4.G.Lakshmi

5.Oriental Insurance Co. Ltd.,
Chennai.

6.Managing Director,
South Arcot Co-op. Milk
Producers' Union Ltd.

... Respondents 4 to 6/
Respondents 1 to 3 in
M.C.O.P.No.38 of 2003



C.M.A.Nos.2490/2006 & 1168/2015

C.M.A.No.1168 of 2015 :

1.R.Tamilarasi

2.Minor Nesapriya
rep. by her next friend and
mother 1st appellant herein

... Appellants/
Claimants in M.C.O.P.No.101 of 2003

Vs.

1.G.Lakshmi

2.The Divisional Manager,
Oriental Insurance Co. Ltd.,
179, Easwaran Koil Street,
Pondicherry – 1.

... Respondents/Respondents

COMMON PRAYER: Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicles Act, against the common award dated 23.09.2005 passed in M.C.O.P.Nos.38 and 101 of 2003 respectively by the Motor Accident Claims Tribunal (Fast Track Court), Kallakurichi.

For appellants in both
C.M.As

: Mr.T.G.Balachandran

For respondents 1 to 3 in
C.M.A.No.2490/2006

: Mr.R.Muralidharan

For 4th respondent in
C.M.A.No.2490/2006 and
1st respondent in
C.M.A.No.1168 of 2015

: No appearance



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For 5th respondent in
C.M.A.No.2490/2006 and
2nd respondent in
C.M.A.No.1168 of 2015

: Mr.M.J.Vijayakumar

For 6th respondent in
C.M.A.No.2490 of 2006

: M/s.T.Girija

Cross Objection No.20 of 2009 in C.M.A.No.2490 of 2006 :

1.Arul Mozhi

2.Minor Arul Raja,
rep. by guaridan mother
1st respondent

... Cross Objectors /
Respondents 1 and 3

Vs.

1.Tamilarasi

2.Minor Nesa Priya,
represented by guardian mother
1st respondent

... Respondents 1 & 2/
Appellants 1 & 2

3.Lakshmi

4.Oriental Insurance Company Ltd.

5.The Managing Director,
South Arcot Co-operative Milk
Producers Union, Villupuram.

..... Respondents 3 to 5 /
Respondents 4 to 6

For cross objectors : Mr.R.Muralidharan

For respondents 1 & 2 : Mr.T.G.Balachandran

For 3rd respondent : No appearance

For 4th respondent : Mr.M.J.Vijayakumar

For 5th respondent : M/s.T.Girija



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COMMON JUDGMENT

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Both the Civil Miscellaneous appeals have been filed by the appellants against the common award dated 23.09.2005 passed in M.C.O.P.No.38 and 101 of 2003 questioning the award passed in favour of the respondents 1 to 3 in C.M.A.No.2490 of 2006 and for not awarding any compensation in favour of the first appellant in both the appeals. Cross objection has been filed by the respondents 1 to 3 in C.M.A.No.2490 of 2006, questioning the apportionment of award of Rs.1,25,000/- passed in favour of the 2nd appellant.

2. Since the issue involved in all the cases are interrelated to each other, they were heard together and are disposed by way of this common judgment.

3. For better appreciation and understanding, the rank of parties mentioned in C.M.A.No.2490 of 2006 are taken into account.

4. The brief facts, which are necessary for the disposal of these appeals, are as follows:

(a) On 07.07.1998 at about 23.30 hours, one Rajagopal, who was working as Driver in South Arcot Co-operative Milk Producers' Union Limited, was driving a Milk Tanker Lorry bearing Registration No.TDF-



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8956 on Vadaloor – Bunrutti Road. At that time, the vehicle bearing Registration No.TN-07-E-0343, which came in the opposite direction and driven by its driver in a rash and negligent manner, dashed against the Milk Lorry, due to which the said Rajagopal sustained grievous injuries. He was taken to Cuddalore Government Hospital and given first aid, and for further treatment, he was taken to the Government General Hospital, Chennai, but he succumbed to the injuries on the way to the hospital. The vehicle bearing Registration No.TN-07-E-0343 was owned by the 4th respondent / Ms.G.Lakshmi and insured with 5th respondent / Oriental Insurance Company.

(b) Claiming to be the legally wedded wife and child of the deceased Rajagopal, the appellants herein / Tamilarasi filed M.C.O.P.No.101 of 2003 seeking compensation of Rs.10 lakhs. Similarly, claiming to be the legally wedded wife and children of the deceased Rajagopal, the respondents 1 to 3 herein / Arulmozhi filed M.C.O.P.No.38 of 2003 seeking compensation of Rs.7 lakhs. In both the claim petitions, they have stated that the accident had occurred only due to rash and negligent driving of the driver of the 4th respondent herein / G.Lakshmi and hence, the 4th respondent herein, who is the owner of the vehicle and 5th respondent / Insurance Company are jointly and severally liable to pay the compensation.



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(c) The 5th respondent herein / Insurance Company has filed counter affidavit opposing the claim petitions and also stating that the burden of proving the legal heirship and dependency lies on the claimants.

(d) On the side of the appellants/claimants in M.C.O.P.No.101 of 2003, PW1 to PW7 were examined and Exs.P1 to P26 were marked. On the side of the respondents 1 to 3 / claimants in M.C.O.P.No.38 of 2003, the first respondent / 1st claimant herself was examined as PW1 and Exs.P1 to P17 were marked. On the side of the Court, Exs.C1 to C6 were marked.

(e) On appreciating the oral and documentary evidences, especially Ex.P1 - FIR lodged by the cleaner of the lorry, which dashed against the deceased, admitting that the accident had occurred as a result of rash and negligent driving of the 4th respondent's driver and Ex.P2 - Motor Vehicles Report, has come to the conclusion that the accident had occurred only due to rash and negligent driving of the driver of the 4th respondent. Relying on Ex.P6- Salary Slip of the deceased, the Tribunal took the salary of the deceased as Rs.5,726/- and by applying multiplier method, awarded Rs.6,16,804/- as total compensation. The Tribunal has further held that as the policy was in force, the 5th respondent/ Insurance Company is vicariously liable to pay



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the compensation of Rs.6,16,804/-.

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(f) So far as the legal entitlement for receiving award amount is concerned, the Tribunal, based on the age of the claimants, concluded that the first respondent herein could be the first and legally wedded wife and the first appellant herein could be the second wife and she cannot be stated to be legally wedded wife and hence, she is not entitled to compensation. The Tribunal has further held that though the second appellant / Nesapriya is illegitimate child, as per Indian Succession Act, she is entitled to get compensation. Accordingly, the Tribunal has apportioned the total compensation of Rs.6,16,804/- and awarded Rs.2,41,804/- in favour of first respondent and Rs.1,25,000/- each in favour of the second and third respondents and second appellant herein.

(g) Now, questioning the award passed in favour of the respondents 1 to 3 herein and questioning the award not passed in favour of the first appellant herein, the appellants have filed the above Civil Miscellaneous Appeals. Questioning the award passed in favour of the second appellant herein, the first and third respondents herein have filed cross objection.



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5. The learned counsel appearing for the appellants has vehemently submitted that there was separation between the deceased Rajagopal and the first respondent herein / Arulmozhi since 1994 and the first respondent herein has an illicit relationship with one Rajendran and due to that relationship, she gave birth to a child by name Aravindan. In order to prove the same, Exs.P18 to P21 marked on the side of the first appellant herein through the evidence of PW3 – Dr.Dhanalakshmi. As the first respondent herein has been living with another man, she is not entitled to get compensation as a dependant. But, the Tribunal, without considering the same, has erroneously awarded in favour of the respondents 1 to 3 herein. He would further submit that the first respondent herein had filed a suit in O.S.No.9 of 2010 seeking relief of administration of properties of the deceased Rajagopal and the same was dismissed by the Court below and then, it was also confirmed by this Court in C.M.A.No.222 of 2014. In view of the above dismissal of the suit, the respondents 1 to 3 are not entitled to compensation as the legal heir of the deceased. He would further submit that in order to show that the appellants were living with the deceased, the appellants have produced Ex.P24 – Legal Heirship Certificate issued in their favour. But, the Tribunal, without considering the above document, has erroneously rejected the said evidence and



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held that first appellant herein is not entitled to compensation.

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6. The learned counsel appearing for the appellants would further submit that in a recent decision in the case of **N.Jayasree and others Vs. cholamandalam MS General Ins. Co. Ltd.**, reported in **2021 ACJ 2685**, the Honourable Supreme Court has held that even though the mother-in-law is not a legal representative, she is a dependent as she was residing with the deceased. By relying upon the above decision, the learned counsel for the appellants submitted that as the first respondent along with her children was residing with some other person and the first appellant along with her child was residing with the deceased, she alone can be stated to be a dependent and thus, she is entitled to receive compensation. Thus, he prayed to declare that the appellants herein alone are entitled to receive full compensation.

7. By relying upon the decision of the Honourable Supreme Court reported in **2009 ACJ 1298 (SC) (Sarala Verma VS. Delhi Transport Corporation)**, the learned counsel appearing for the appellants would submit that while calculating the award amount, 50% of the salary of the deceased has not been added as future prospects and hence, it may be added and awarded compensation accordingly. The learned counsel appearing for the appellants, by relying upon the decision of the Honourable Supreme Court reported in **2013 ACJ 1403 (Rajesh and**



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others Vs. Rajbir Singh and others), has further submitted that the loss of consortium to be awarded as Rs.1 lakh to the first appellant. Thus, the appellants prayed to enhance the compensation and award in their favour.

8. The learned counsel appearing for the respondents 1 to 3 and cross objectors would submit that considering the age of the deceased and claimants, the Tribunal has rightly held that the first respondent is the first wife of the deceased. He would further submit that during the pendency of these Civil Miscellaneous Appeals, the respondents 1 to 3 herein filed a suit in O.S.No.9 of 2010 for the relief of administration of properties left by the deceased Rajagopal. Though the said suit was dismissed holding that a different suit for specific performance has to be filed, it was categorically held by the Court below that the first respondent herein is the legally wedded wife of the deceased and the respondents 2 and 3 are their children. Therefore, the finding of the Tribunal that the first respondent herein is the legally wedded wife of the deceased and the respondents 2 and 3 are their children, need not be interfered with.

9. The learned counsel appearing for the respondents 1 to 3 / cross objectors would further submit that though the Tribunal has rightly held that the first appellant is not legally wedded wife, it has



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erroneously held that the 2nd appellant is entitled to get compensation and hence, the said finding may be dismissed. He would further submit that the cross objection has been filed by the respondents 1 to 3 / cross objectors for enhancement of compensation. By relying upon the decision of the Honourable Supreme Court reported in **2013 ACJ 1403 (Rajesh and others Vs. Rajbir Singh and others)**, the learned counsel has further submitted that the loss of consortium to be enhanced from Rs.10,000/- to Rs.1 lakh and 50% of the income of the deceased to be added as future prospects and accordingly the enhanced compensation to be awarded to the respondents 1 to 3. Thus, he prayed to dismiss both the appeals and allow the cross objection.

10. The learned counsel appearing for the Insurance Company would submit that both the appeals have been filed only questioning the apportionment of compensation awarded in favour of the respondents 1 to 3 herein by paying the Court fee of Rs.1/-. The appellants herein did not challenge the quantum of compensation and appeal grounds are not raised to that effect. Therefore, the appellants are not entitled for any enhancement of compensation. He would further submit that similarly, the respondents 1 to 3 filed cross objection in C.M.A.No.2490 of 2006 only questioning the award passed in favour of the 2nd appellant and no grounds raised to enhance the compensation. Further, cross objection has been filed only against the appellants in C.M.A.No.2490 of 2006 and



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not against the co-respondent. Hence, the cross objection filed by the respondents 1 to 3 is not at all maintainable against the Insurance Company, as per the decision of this Court in **2012 (1) TNMAC 186 (United India Insurance Co. Ltd., Vs. Thangamuthu and others)**. Thus, he prayed to dismiss both the appeals and cross objection.

11. Heard the learned counsel appearing on either side and perused the records carefully.

12. It is a case of fatal. It is not in dispute that the accident had occurred only due to the rash and negligent driving of the driver of the vehicle owned by the fourth respondent and insured with the 5th respondent herein. Considering the age of the claimants, the Tribunal has held that the first respondent herein is the first wife and the first appellant herein is the second wife of the deceased. A perusal of the judgment dated 13.08.2013 passed in O.S.No.9 of 2010 would go to show that the brother of the deceased, who was examined as PW2 in the said suit, has categorically deposed that the first respondent herein is the first wife of the deceased Rajagopal and the respondents 2 and 3 are their children and that the third respondent did final rituals to his father / the deceased Rajagopal. Relying on the above evidence and also Exs.A5 and A6 – Birth Certificates of the respondents 2 and 3 herein, the Court below has held that the first respondent is the legally



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wedded wife of the deceased and the respondents 2 and 3 are their children.

13. By relying upon Exs.P18 to P21 and the evidence of PW3, the appellants submitted that the first respondent was living with one Rajendran and out of their relationship, the first respondent gave birth to a child by name Aravindan. The first respondent denied the above allegation in her evidence. Exs.P18, P19 and Ex.P20 are stated to be the consent letters/forms signed by the first respondent and one Rajendran for caesarian operation to the first respondent. Though it is stated that in Ex.P18 the first respondent herself stated her husband name as Rajendran, PW3, who gave treatment to the first respondent, herself admitted in her evidence that the said forms were filled by an employee of the hospital and that there is an overwriting in the form on the name of the husband of the first respondent. Therefore, based on the above documents and the evidence of PW3, it cannot be concluded that the first respondent was living with one Rajendran and that the first respondent is not a dependant of the deceased.

14. In this case, the appellants have produced Legal Heirship Certificate, in order to show that they are the only legal heirs of the deceased Rajagopal. As rightly held by the Tribunal, the Legal Heir Certificate produced by the appellants is not a conclusive proof and



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therefore, based on the same, the first appellant cannot be stated to be a legally wedded wife of the deceased. Admittedly, in this case, no legal separation took place between the first respondent and the deceased. As per the Hindu Marriage Act, when the first marriage is subsistence, the second marriage is void. Hence, the Tribunal has rightly held that the first appellant / 2nd wife of the deceased is not legally wedded wife and she is not entitled to compensation. At the same time, as per the Hindu Succession Act, coupled with Hindu Marriage Act, illegitimate child is having right in father's estate. Hence, the Tribunal has rightly held that the second appellant is entitled for compensation and accordingly, awarded compensation in favour of the second appellant. This Court does not find any valid reason to interfere with the said findings of the Tribunal.

15. So far as the quantum of compensation is concerned, as rightly stated by the learned counsel appearing for the Insurance Company, the appellants have paid Court fee of Rs.1/- by confining their appeals only in respect of special damages and the appellants have also not raised any grounds in respect of quantum of compensation in the grounds of appeal. It has already held that the first appellant is not entitled to compensation and therefore, the question of enhancement of consortium does not arise.

16. The law is well settled that as a general rule, a respondent can file cross objection only against an appellant and it is only in exceptional



cases, where the decree proceeds on a common ground or the interest of the appellant is intermixed with that of the respondent, then a respondent could be allowed to urge a cross objection against a co-respondent. In this case, the cross objection has been filed by the respondents 1 and 3 in C.M.A.No.2490 of 2006, where no grounds raised in respect of quantum of compensation. Further, in the cross objection, the grounds were raised only against the award passed in favour of the 2nd appellant and no ground raised in respect of quantum of compensation. As the cross objection is filed solely against the appellants and not questioning the quantum of compensation, the same is not maintainable against co-respondent / Insurance Company. Hence, this Court is of the view that the cross objectors are not entitled for enhancement of compensation.

17. In the result, both the Civil Miscellaneous Appeals and the Cross Objection are dismissed. Consequently, connected miscellaneous petitions are also dismissed. It is stated that the entire award amount with interest has already been deposited before the Tribunal and hence, the 2nd appellant and respondents 1 to 3 are permitted to withdraw their share as apportioned by the Tribunal, by filing a petition before the Tribunal. No costs.

08.11.2022

Index : Yes/No
Internet: Yes/No



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To

1.The Motor Accident Claims Tribunal /
Fast Track Court, Kallakurichi

2.The Record Keeper,
V.R. Section,
Madras High Court,
Madras.



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C.M.A.Nos.2490/2006 & 1168/2015

J. NISHA BANU, J.,

pm

common judgment made in
C.M.A.No.2490 of 2006 and 1168 of 2015
and Cros.Obj.No.20 of 2009

08.11.2022