



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	01.03.2022
PRONOUNCED ON	16.03.2022

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

C.M.A.No.2778 of 2017 &
C.M.P.No.15860 of 2017

Ranganayagi ...Appellant/first respondent

Vs.

1.Vadivel

2.Kalaichelvi ...Respondents 1 & 2/Petitioners

3.Ramalingam ...3rd Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, 1988 praying to set aside the order made in M.C.O.P.No.74 of 2013 on the file of the Motor Accident Claims Tribunal, Rasipuram, dated 10.01.2017.

For appellant .. Mr.C.Kulanthaivel

For Respondents .. Mr.Ma.Pa.Thangavel (for R.1 & R.2)
No appearance for R.3

JUDGMENT

This Civil Miscellaneous Appeal had been filed by the 1st respondent in M.C.O.P.No.74 of 2013 on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Rasipuram, questioning the judgment dated 10.01.2017. M.C.O.P.No.74 of 2013 had been filed by the 1st and 2nd respondents herein, seeking compensation towards the death by motor accident of Dhanalakshmi, wife of the 1st respondent and mother of the 2nd respondent.

2. The motor accident took place on 09.04.2012 at around 12.00 in the afternoon, when the deceased Dhanalakshmi was going towards the bus stop near Paavai Arts and Science College at Namakkal to Salem main road. A Maruti 800 Car bearing



registration number TN-27-J-9202 came in a rash and negligent manner and hit against her. She suffered injuries on the left side of her head, left leg, right leg and also in other parts of the body. She was taken to Manickam Hospital at Rasipuram and given first aid and thereafter, she was taken to Vinayaka Mission Hospital at Salem where, she was admitted as an inpatient. She was then admitted in the Government Hospital at Salem and she died on 14.04.2012.

3. Claiming compensation in their capacity as legal heirs, the 1st and 2nd respondents / husband and daughter filed the petition before the aforementioned Tribunal. It has to be mentioned that the said Maruti 800 Car was not insured at that time. The first respondent before the Tribunal is the appellant herein and she is the owner of the vehicle and the second respondent before the Tribunal is the driver.

4. The appellant / first respondent filed a counter affidavit denying that the accident occurred due to the rash and negligent driving of the Maruti Car. She also stated that the claimants were not the legal heirs of Dhanalakshmi and specifically claimed that the deceased Dhanalakshmi is not the wife of first claimant who is the first respondent herein. She stated that Dhanalakshmi did not have any legal heirs. She stated that the claim petition should be dismissed. Defence regarding the quantum of compensation claimed was also taken.

5. The Tribunal took up the petition for trial and during the course of trial, on the side of the claimants, two witnesses were examined namely first claimant / first respondent herein / Vadivel and an eye witness. On the side of the respondents, the appellant herein was examined as R.W.1. The claimants marked Exs. P.1 to P.5 and on the side of the respondents Exs.R.1 to R.7 were marked. Among the documents relied on by the claimants to establish legal heirship and right to claim compensation were Ex.P.5 death certificate, Ex.P.6 - legal heirship certificate and Ex.P.9 - Voter ID. The respondent on the other hand relied on Ex.R.1 - the Family Pension Card and Ex.R.2.

6. The Tribunal framed three issues. The first issue was whether the accident occurred due to the rash and negligent driving of the Maruti 800 car bearing Number TN 27 J 9202 and the second issue was whether the claimants therein were entitled to seek compensation. The third issue was regarding the quantum of compensation and who has to pay the compensation.



7. With respect to the first issue, the Tribunal found that the deceased was going towards the bus stop near Paavai Arts and Science College and at that particular point of time a Maruti 800 Car bearing registration No. TN 27 J 9202 dashed against her. It was held, placing reliance on Ex.P.1 - F.I.R and Ex.P4 - charge sheet that the driver of the vehicle was driving the car in a rash and negligent manner. It was concluded with respect to that particular issue that the accident was caused only owing to the rash and negligent manner in which the vehicle was being driven.

8. The second issue was with respect to entitlement of quantum of compensation. The deceased Dhanalakshmi was said to be working as Cooking Superintendent in Paavai Engineering College and she was said to be earning a sum of Rs.10,000/- per month. She was aged about 44 years at the time of her death. The first claimant / husband was aged 56 years at that time and it was stated that the second claimant / daughter was aged about 25 years.

9. In the judgement, while considering the evidence, the Tribunal determined the monthly income of Dhanalakshmi at Rs.6,000/- and accepted that the claimants were her legal heirs, taking into consideration Ex.P.6 legal heirship and then deducted 1/3rd share towards her personal expenses and therefore determined that her contribution towards family would be Rs.4,000/- per month and applied a multiplier of 14 and determined that the pecuniary loss to her family at Rs.6,72,000/- (Rs.4,000 x 12 x 14 = Rs.6,72,000/-). The Tribunal also granted a sum of Rs.20,000/- towards loss of consortium and a sum of Rs.15,000/- towards loss of love and affection. The Tribunal also awarded a sum of Rs.10,000/- for funeral expenses and a sum of Rs.5,000/- towards transportation charges. The Tribunal took into consideration Ex.P.8 - the medical bills and granted the sum mentioned therein namely a sum of Rs.94,150/-. The Tribunal finally awarded a sum of Rs.8,16,150/- and the calculation was as follows;

Pecuniary Loss	-	Rs.6,72,000/-
Loss of Consortium	-	Rs. 20,000/-
Loss of Love and affection	-	Rs. 15,000/-
Funeral Expenses	-	Rs. 10,000/-
Transportation Charges -		Rs. 5,000/-
Medical Expenses	-	Rs. 94,150/-
Total	-	Rs.8,16,150/-

10. The appellant primarily concentrated on the legality of the claimants in filing the claim petition and did not raise



substantial question on the compensation granted.

11. Therefore, I would affirm the determination of liability and the quantum of compensation granted.

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12. Thereafter, the Tribunal took up for consideration the third issue, which is what has been contested by the appellant herein namely, the entitlement of the claimants to receive the aforesaid compensation awarded and the liability of the appellant to pay the compensation amount.

13. In this connection, the Tribunal had taken into consideration, as aforesaid, Ex.P.6 - the legal heirship certificate. However, the appellant herein had widened the scope of the appeal and placed strong reliance on Ex.R.1 which was marked during the cross examination of the first claimant. That document was the family ration card of the first claimant Vadivelu and it was alleged that one of the names found therein, Karpagam, was the actual wife of the Vadivelu / the claimant. There were also two other names Tamilarasan and Karthik and they were said to be his sons. That family card was for the period from 2005 to 2009.

14. It was also admitted by the witness that the name of the deceased Dhanalakshmi or the name of the second claimant / daughter / Kalaichelvi was not found in that family ration card. It was stated that the name were originally there but since Kalaichelvi got married, her name was removed and since Dhanalakshmi died her name was also removed. It was stated that the 1st respondent herein developed a relationship with Karpagam and she was living with him. The 1st respondent / PW1 was not able to tell the date and year of his marriage with Dhanalakshmi. He was also unable to produce any photographs with her. A specific suggestion was put to the first claimant that Dhanalakshmi was actually the wife of one Natesan of one Konooripatti village. He denied that particular suggestion. He also denied that the second claimant was not born to him and Dhanalakshmi. He admitted that Karpagam, Tamilchelvi and Karthik are living with him as dependants. He had actually given the complaint regarding the accident based on which the FIR has been registered. During re-examination with permission, he also filed Ex.P.9, the identity card of Dhanalakshmi.

15. The appellant herein, as the first respondent also let in evidence questioning the relationship of the claimants with the deceased. The witness when confronted with Ex.P.5, legal heirship certificate which affirmed that the legal heirs of



Dhahanlakshmi were the claimants herein.

16. On the basis of the aforesaid evidence, it has to be reconsidered whether the claimants before the Tribunal are entitled to receive compensation amount as directed by the Tribunal.

17. The issue questioning marital relationships has bothered the Courts quite often and Courts have tended to accept legality of the relationship and shift the burden of disproving such legality on the person who suspects such relationship.

18. In the instant case, the appellant has taken a very specific stand that the first and second respondents are not the legal heirs of the deceased Dhanalakshmi. In the legal heirship certificate which has been produced in Ex.P.6, the two claimants have been shown as legal heirs of Dhanalakshmi. Moreover, Ex.P.5 had also been produced which is the death certificate of Dhanalakshmi wherein the name of the husband is given as Vadivelu. The appellant relied on Ex.R.1, which is a family ration card and in which the name of one Karpagam has been given. But however it is not stated that she is the wife of Vadivelu, the 1st respondent herein.

19. In Badri Prasad Vs. Deputy Director of Consolidation and others reported in AIR (1978) SC 1557, the Hon'ble Supreme Court had an occasion to express their views on an issue like this in the following words;

"..... An adventurist challenge to the factum of marriage between the two, by the petitioner in this special leave petition, has been negatived by the High Court. A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastard. In this view, the contention of Shri Garg, for the petitioner, that long after the alleged marriage, evidence has not been produced to sustain its ceremonial process by examining the priest or other witnesses, deserve no consideration. If man and woman who live as husband and wife in society are compelled to prove, half a century later, by eye-witness evidence that they were validly married, few will succeed. The contention deserves to be negatived and we do so without hesitation. The



special leave petitions are dismissed."

20. In of Sivasamy & 2 others Vs. Poomalai & 2 others reported in 2008 (5) CTC 299, a learned Single Judge of this Court had examined the issue of presumption of marriage by non-cohabitation and when such presumption was sought to be reverted, the learned Single Judge observed as follows;

"16.....All gender based discriminations, all practices which affect the dignity of women are contrary to the Constitution and Convention on elimination of all forms of Discrimination against Women. The status of woman who claims she is the wife and had lived as such for 40 years cannot be reduced to a mere "association" at the instance of the plaintiff merely because she wants the property especially when the world had labelled the fifth defendant as the wife of Masi Ambalam. To deny her status would rob her of the dignity to which she is entitlement to."

21. Though the facts in the aforementioned cases are in respect of presumption of marriage between two individuals owing to long cohabitation, the general principle that a wife should not be denied her marital status, can be imported in this case, since a suggestion had been put by the appellant that though the claimant Vadivelu specifically claimed that he was the husband of Dhanalakshmi, she was actually the wife of one Natesan. I hold that trend of questioning a solemn relationship itself is a slur on her dignity, particularly when she is no longer alive to uphold her sanctity. It is only expected that the Courts uphold her dignity.

22. I would therefore concur with the order of the Tribunal that the first respondent is the husband and the second respondent is the daughter of Dhanalakshmi and that they are eligible to receive the compensation granted by the Tribunal for the death of Dhanalakshmi.

23.I would therefore, confirm the decision of the Tribunal that the appellant would have to pay compensation to the first and second respondents. In short, the appeal fails and the same stands dismissed.

24. The appellant is directed to deposit the compensation granted by the Tribunal to the credit of M.C.O.P.No.74 of 2013 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) Rasipuram with interest of 7.5% per annum from the date of filing of the petition till the date of deposit within a



period of eight weeks from the date of receipt of copy of this order. On such deposit, the respondents are permitted to withdraw the compensation granted. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

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Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

mrm/kkn

To

1.Motor Accident Claims Tribunal,
(Subordinate Judge),
Rasipuram.

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

+1cc to Mr.Ma.Pa.Thangavel, Advocate SR.No.17836

+1cc to Mr.C.Kulanthaivel, Advocate SR.No.18082

C.M.A.No.2778 of 2017

JP-II (CO)

CB(05/04/2022)