



C.M.A(MD)No.591 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 20.10.2022

Pronounced on : 28.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.591 of 2022

1.Thirukandan

2.Sathiyavani

3.Prema : Appellants / Respondents 4 to 6

Vs.

1.Madathi

2.Minor.Abi

3.Minor.Deepak Raja : Respondents 1 to 3/Petitioners

(Minor respondents rep. through their father and next guardian first respondent herein)

4.Thangaraj

5.United India Insurance Company Limited,
No.1, Post Office Road,
Palayamkottai,
Tirunelveli - 627 002.

6.Amuespandi : Respondents 4 to 6 /
Respondents 1 to 3



C.M.A(MD)No.591 of 2022

WEB COPY

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.180 of 2015, dated 19.11.2020, on the file of the Motor Accident Claims Tribunal /I Additional District Court, Tuticorin.

For Appellant : Mr.T.Selvakumarn

For Respondents : R.Venkatesan, Legal Aid Counsel,
for R2 and R3.

: Mr.J.S.Murali, for R5.

: No Appearance, for R1, R4 and R6.

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.180 of 2015, dated 19.11.2020, on the file of the Motor Accident Claims Tribunal /I Additional District Court, Tuticorin.

2.Admittedly, the respondents 1 to 3 have laid the claim petition against the appellants herein and respondents 4 to 6, claiming compensation for the death of one Ayyappan.



C.M.A(MD)No.591 of 2022

WEB COPY

3.The first respondent/first claimant is the wife and the respondents 2 and 3/ claimants 2 and 3 are the sons of the deceased Ayyappan. The appellants 1 and 2/respondents 4 and 5 are the parents and third appellant /6th respondent is the sister of the deceased Ayyappan.

4.During trial, the claimants have examined the first claimant Madathi as P.W.1 and exhibited 13 documents as Ex.P.1 to Ex.P.13. The respondents 1 to 3 remained ex-parte before the Tribunal. The fifth respondent/second respondent-insurer has adduced neither oral nor documentary evidence. The appellants/respondents 4 to 6 have examined the first appellant /4th respondent Thiru.Thirukandan as R.W.1 and exhibited four documents as Ex.R.1 to Ex.R.4.

5.The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides has passed the impugned order, dated 19.11.2020, holding that the accident was occurred only due to the rash and negligent driving of the vehicle_by the third respondent, which was owned by the second respondent and directed the second respondent/insurer to pay compensation of Rs.24,98,000/- to the claimants and the respondents 4 and 5, wherein the



C.M.A(MD)No.591 of 2022

appellants 1 and 2/respondents 4 and 5 were awarded with Rs.75,000/- each and the remaining amounts to the claimants 1 to 3. Aggrieved by the aforesaid apportionment and non granting of any compensation to the third appellant/6th respondent sister of the deceased, they have come forward with the present appeal.

6.The learned counsel for the appellants would submit that the quantum of compensation awarded by the Tribunal is very low; that the Tribunal has failed to consider that the married sister of the deceased is also entitled to get compensation; that the Tribunal ought to have decided that all the legal representatives are entitled to get compensation; that the Tribunal after awarding total compensation of Rs.24,98,000/- has granted Rs.75,000/- each to the parents of the deceased, which is very low; that the Tribunal has failed to consider that the mother is a class-I legal heir under the Hindu Succession Act and that the trial Court ought to have fixed the monthly income at Rs.15,000/- and ought to have granted Rs. 40,000/- for loss of love and affection to the third appellant/6th respondent.

7.Let us consider as to whether the compensation awarded is just and proper.



C.M.A(MD)No.591 of 2022

WEB COPY

8.The case of the claimants and the respondents 4 to 6 is that the deceased Ayyappan was aged 22 years at the time of accident; that he was working as a driver; that the deceased was possessing valid license for driving the heavy vehicles and that he was earning Rs.15,000/- per month.

9.The claimants have produced the copy of the driving license of the deceased Ayyappan under Ex.P.7 and whereunder, it is evident that the deceased was having license to drive the light and heavy vehicles and batch endorsement for driving the transport vehicles.

10.As rightly observed by the learned Tribunal, neither the claimants nor the appellants have produced any evidence to show that the deceased was earning Rs.15,000/- per month. The Tribunal by considering the fact that the deceased was a heavy vehicle driver, has fixed the monthly income at Rs.10,000/-.



C.M.A(MD)No.591 of 2022

WEB COPY

11.The learned counsel for the appellants has relied on two decisions of this Court ;

(i) ***Divisional Manager, United India Insurance Company Limited Vs. Manimegalai and others*** reported in **2022(2) TN MAC 222 (DB)** .

(ii) ***Latha Mary and others Vs. Murugan and others*** reported in **2002(2) TN MAC 102.**, and argued that in those decisions, the monthly income of the lorry driver was fixed at Rs.13,000/- per month.

12.To counter the said argument, the learned counsel for the fifth respondent/insurer has relied on the decision of the Hon'ble Supreme Court in ***Chandra @ Chanda @ Chandraram and another Vs. Mukesh Kumar Yadav and others*** reported in **2021(2) TN MAC 498(SC)**, wherein the Hon'ble Supreme Court while modifying the monthly income of he deceased, who was possessing heavy vehicle driving license, has fixed at Rs.8,000/- per month.

13.As rightly pointed out by the learned counsel for the fifth respondent, in the decision of the Hon'ble Supreme Court, the accident was occurred on 27.02.2016.



C.M.A(MD)No.591 of 2022

WEB COPY

14.As rightly pointed out, in the case on hand, the accident was occurred on 05.01.2015 and also the fact that he was owning license to driver the heavy vehicles with batch endorsement, the decision of the Tribunal in fixing the monthly income at Rs.10,000,- cannot be found fault with. As per the decision of the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **2017 ACJ 2700**, the Tribunal has rightly added 40% income towards future prospects.

15.Considering the number of dependents, the Tribunal has rightly deducted 25% of the income towards personal and living expenses of the deceased and arrived at Rs.22,68,000/- as compensation for loss of dependency.

16.The Tribunal has rightly awarded Rs.40,000/- to the first claimant for loss of spousal consortium; Rs.80,000/- to the claimants 2 and 3 for loss of parental consortium; Rs.80,000/- to the appellants 1 and 2 for loss of filial consortium and Rs.15,000/- for funeral expenses and Rs.15,000/- towards loss of estate under the conventional heads, totalling Rs.24,98,000/-.



C.M.A(MD)No.591 of 2022

only to mean the spouse, parents and children of the deceased. As noticed above, [MV Act](#) is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the [MV Act](#) calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfil its legislative intent. We are also of the view that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. [Section 166](#) of the MV Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realization of compensation.

17. It is settled that percentage of deduction for personal expenses cannot be governed by a rigid rule or formula of universal application. It also does not depend upon the basis of relationship of the claimant with the deceased. In some cases, the father may have his own income and thus will not be considered as dependent. Sometimes, brothers and sisters will not be considered as dependents because they may either be independent or earning or married or be dependent on the father. The percentage of deduction for personal expenditure, thus, depends upon the facts and circumstances of each case.



C.M.A(MD)No.591 of 2022

18. In the instant case, the question for consideration is whether the fourth appellant would fall under the expression 'legal representative' for the purpose of claiming compensation. *In Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and Anr.* 3 this Court while considering the entitlement of the brother of a deceased who died in a motor vehicle accident to maintain a claim petition under the provisions of the *MV Act*, held as under:

“13. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by *Sections 110A to 110F* of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in *Section 110 B* of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by *Section 110B* of the Act



WEB COPY



C.M.A(MD)No.591 of 2022

amongst the legal representatives for whose benefit an application may be filed under Section 110 A of the Act have to be done in accordance with wellknown principles of 33 (1987) 3 SCC 234 law. We should remember that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the breadwinner of the family and if the breadwinner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhai Khimji Vira v. Chaturbhai Taljabhagujri 4 and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110 A of the Act if he is a legal representative of the deceased.”

19.In Hafizun Begum (Mrs) vs. Mohd. Ikram Heque and Ors.⁵ it was held that:

“7. ...12. As observed by this Court in Custodian of Branches of Banco National Ultramarino v. Nalini Bai Naique⁶ the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead, it stipulates



WEB COPY



C.M.A(MD)No.591 of 2022

that a person who may or may not be legal heir, competent to inherit the 4 AIR 1977 Guj 195 5 (2007) 10 SCC 715 6 1989 Supp (2) SCC 275 property of the deceased, can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in Gujarat SRTC v. Ramanbhai Prabhatbhai³ a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child."

20. In the present case, the third appellant is the sister of the deceased. Even though, the third appellant may not be a legal heir of the deceased, certainly she could have suffered on account of death of her brother. Considering the above, this Court has no hesitation to hold that the third appellant is also a legal representative under Section 166 of Motor Vehicles Act and is entitled to claim compensation.

21. As already pointed out, the Tribunal has awarded Rs.75,000/- each to the appellants 1 and 2, who are the parents of the deceased. The



C.M.A(MD)No.591 of 2022

WEB COPY

Tribunal has not assigned any reason or ground for granting Rs.75,000/- only to the parents of the deceased, while granting more than Rs.23,00,000/- to the claimants 1 to 3. As rightly pointed out by the learned counsel for the appellants, the second respondent/fifth respondent is none other than the mother of the deceased, who is the class-I heir under the Hindu Succession Act.

22.Considering the entire facts and circumstances and the quantum of compensation awarded at by the Tribunal, this Court is of the view that the mother of the deceased is to be granted Rs.3,00,000/- and the father is to be granted Rs.1,00,000/- and the sister is to be granted Rs.50,000/-. With the above modification, the appeal is liable to be partly allowed.

23.In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded at Rs.24,98,000/- stands confirmed, out of the said Rs.24,98,000/-, the first respondent/wife of the deceased is entitled to get **Rs.9,48,000/-**; the respondents 2 and 3/minor claimants are entitled to get **Rs.5,50,000/-** each; the appellants/respondents 4 to 6 are entitled to get **Rs.1,00,000/-** , **Rs.3,00,000/-** and **Rs.50,000/-**



C.M.A(MD)No.591 of 2022

respectively, with interest at 7.5% per annum as directed by the Tribunal.

The fifth respondent is directed to deposit the amount with interest at 7.5% per annum, if not already deposited. On such deposit, the appellants and the first respondent are permitted to withdraw their shares with accrued interests and costs, on due application. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalized Bank in a fixed deposit scheme, till they attain majority. The mother and guardian of the minor claimants is permitted to withdraw the accrued interest once in three months directly from the Bank only for the welfare of the minors. Parties are directed to bear their own costs.

28.11.2022

Index : Yes : No
Internet : Yes : No
das

To

- 1.The Motor Accident Claims Tribunal /
I Additional District Court, Tuticorin.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.591 of 2022

K.MURALI SHANKAR,J.

das

C.M.A(MD)No.591 of 2022

28.11.2022