IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2695 of 2013 and 64 of 2014
and
M.P.Nos.1 + 1 of 2013 and 2014

The Divisional Officer,
The Iffco Tokiyo General Insurance Co.Ltd.,
ITGI, Second Floor,
No.28, North Usman Road,
T.Nagar, Chennai. ... Appellant in both appeals

Vs.

1. Kanagavalli
2. Selvakumar
3. Selvam ...Respondents in CMA 2695 of 2013

1. T.Sundari
2. T.Malar
3. T.Amsavalli
4. T.Raji
5. T.Rajesh
6. Minor T.Suresh
(Minor represented by his mother and next friend, 2nd petitioner herein)
7. M.Selvam ... Respondents in CMA 64 of 2014

Prayer in C.M.A.No.2695 of 2013: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.396 of 2010, dated 20.03.2012 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Virudachalam.

Prayer in C.M.A.No.64 of 2014: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.1600 of 2008, dated 21.11.2012 on the file of the Motor Accidents Claims Tribunal, 1st Additional District and Sessions Judge, Cuddalore.

Both Appeals

For Appellants : Mr.J.Michael Visuvasam

C.M.A.No.2695 of 2013:

For Respondents : Ms.H.Sujithra for Ms.P.T.Ramadevi [R1 & R2]

No Appearance [R3]

C.M.A.No.64 of 2014:

For Respondents : Mr.UM.Ravichandran [R1 to R6]

No Appearance [R7]

COMMON JUDGEMENT

Since the issue involved in both the appeals are one and the same, with the consent of the learned counsel for the parties, both the appeals were heard together and disposed of by this common order.

2. Challenging the awards passed by the Motor Accidents Claims Tribunal, Additional Subordinate Court, Virudachalam and I Additional District and Sessions Court, Cuddalore in M.C.O.P.No.396 of 2010 and M.C.O.P.No.1600 of 2008 respectively vide awards dated 20.03.2012 and 21.11.2012 respectively, the appellant / insurance company has preferred the above appeals.

3. <u>The facts in brief are as follows :-</u>

On 31.01.2008 at about 3:30 p.m., when the deceased, who is the husband of the first respondent in C.M.A.No.2695 of 2013 and respondents 1 and 2 in C.M.A.No.64 of 2014 was travelling with his goods in a load van bearing registration No.TN 31 AA 2351, the driver of the said van had driven the vehicle in a rash and negligent manner and while applying a sudden brake, the van capsized and the deceased was thrown out of the vehicle, due to which, he sustained multiple fractures all over his body and head and he succumbed to his injuries when taken to the hospital. The first, second and third wives of the deceased along with their children have filed two separate claim petitions before the respective Tribunal seeking compensation and the respective Tribunal vide separate awards dated 20.03.2012 and 21.11.2012 has awarded two different compensation under various heads. Challenging the same the present appeals have been filed by the appellant / insurance company.

4. The learned counsel for the appellant submits that though the law recognizes only one wife and it is also a settled position of law that the second and third wives cannot lay claim on the husband's money, the Tribunal has awarded two different compensation in favour of the first, second and third wives which is *per se* unsustainable. He further submits that without the knowledge of the owner of the said van, the deceased travelled in the van by paying a sum of Rs.100/- to the driver of the van. However, one of the other occupant of the vehicle has made a complaint before the Law Enforcing Agency and categorically deposed that he travelled along with the driver. Further, as per the terms and conditions of the policy, the seating capacity of the van is only 2, however, at the time of accident, more than two persons had travelled in the above said van, which is a clear violation of policy conditions, and the insurance company is not liable to pay if there is violation of the policy conditions relating to carrying of persons in the vehicle.

5. It is further the submission of the learned counsel for the appellant that even as per the family card which was produced before the Tribunal, the age of the deceased was mentioned as 56 years, whereas the post-mortem certificate issued by the Doctor shows the age of the deceased only as 50 years, which is not a conclusive proof of age. When a person has made a declaration before the Revenue Authorities, the Tribunal ought to have considered the age of the deceased as 56 years as mentioned in the family card as it is a conclusive proof of age, without doing so, the Tribunal has fixed the multiplier at 13 which is *per se* unsustainable. Hence, he prayed to allow these appeals.

6. The learned counsel for the respondents 1 and 2 in C.M.A.No.2695 of 2013 submits that admittedly the first wife namely Kanagavalli and her son had filed a suit before the civil Court by impleading the second and third wives of the deceased to declare the first wife and her son as legal heirs of the deceased. However, the Civil Court granted declaration in favour of the first wife of the deceased against which the second and third wives of the deceased have not chosen to prefer any appeal. Hence, the award passed by the Tribunal in M.C.O.P.No.396 of 2010 dated 20.03.2012 in favour of the first wife of the deceased cannot be interfered with. Accordingly, she prayed for passing

appropriate orders.

7. The learned counsel for the respondents 1 to 6 in C.M.A.64 of 2014 submits that as per the Section 166 of the Motor Vehicles Act, 1988, the legal representatives of the deceased are entitled to file a claim petition. However, Section 2(11) of C.P.C. adverts to the term “legal representative”. Hence, the second and third wives of the deceased namely T.Sundari and T.Malar along with their legal heirs are entitled for the compensation awarded by the claims Tribunal. He further submits that the legal heir certificate was also issued by the Revenue Authorities based on which the Award dated 21.11.2012 in M.C.O.P.No.1600 of 2008 was passed by the Tribunal, which cannot be interfered with.

8. He further submits that admittedly a qualified Doctor upon physical examination has assessed the biological age of the deceased as 50 years, and it is a conclusive proof and the same need not be interfered with. He further submits that the Tribunal failed to consider that the deceased was engaged in the business of oil mill and was earning a sum of Rs.10,000/- per month at the relevant point of time, whereas, the Tribunal fixed the notional income at

Rs.4,500/-, which is on the lower side and the same needs interference of this Court.

9. Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondents 1 and 2 in C.M.A.No.2695 of 2013 and respondents 1 to 6 in C.M.A.No.64 of 2014 and perused the materials available on record.

10. Two claim petitions have been filed, one by the first wife and son, while the other is by the second and third wives and their children. However, it is to be pointed out that the claim petition filed by the second and third wife and their children could be permitted only to the extent of the children being the legal heirs of the deceased and by no stretch the second and third wives could be brought within the ambit of legal heirs of the deceased so as to claim compensation. Therefore, the compensation awarded in the claim petition in M.C.O.P.No.1600 of 2008 filed by the second and third wives and their children, requires to be set rejected and the children of the second and third wives, who in turn would be considered as legal heirs of the deceased could very well be considered for compensation in the claim petition filed by the first wife

and her son, who are also the legal heirs of the deceased.

11. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievance of the appellant / insurance company is that though the seating capacity of the said van is only two, without the knowledge of the owner of the vehicle, the deceased travelled in the said vehicle which is in violation of the policy conditions. It is discernible from the F.I.R. that, one of the occupier of the vehicle made a complaint before the Law Enforcing Agency by claiming that the deceased travelled along with him and on application of sudden brake, the deceased was thrown out of the vehicle. Upon considering the said facts the Tribunal has arrived at a conclusion that the deceased travelled along with the driver, such factual finding rendered by the Tribunal cannot be interfered with.

12. As per the settled position of law, the first wife is only entitled to claim compensation on the husband's money, and the second and third wives are not recognized by law as the legal heirs, as the performance of second and third marriage is an offence. However, it is to be pointed out, as aforesaid, that the off-springs through the three marriages would be the legal heirs of the

deceased and in that background, the children born to the second and third wives of the deceased, through the deceased would also be the legal heirs of the deceased in addition to the first wife and her children being the legal heirs of the deceased and they would be entitled to compensation. Hence, the claim petition filed by the second and third wives of the deceased in M.C.O.P.No.1600 of 2008 dated 21.11.2012 to the extent that compensation is payable to the children born to the deceased through the said wives cannot be interfered with, but compensation, if any, awarded to the second and third wives cannot be sustained and the said portion of the award is set aside.

13. Now coming to the question of quantum of compensation arrived by the Tribunal in so far as the claim petition filed by the first wife of the deceased is concerned, in the absence of any income proof, the Tribunal had rightly fixed the notional income at Rs.4,500/-. Though the age of the deceased as mentioned in the family card was 56 years, however, the Tribunal has fixed the multiplier at 13, by taking into consideration the age of the deceased as 50 years from the post-mortem certificate issued by a Doctor. However, ascertainment of age by the doctor during post mortem is not a conclusive proof of age, more so, when there exists a family card, which fixes the age of the

deceased at 56. However, it is to be pointed out that even the age shown in the ration card cannot be said to be a conclusive proof, which could form the basis for fixing the age of the deceased. Therefore, in the interest of justice and giving benefit to both the parties, this Court is inclined to hold that the deceased could be safely considered to be in the age group of 51 to 55 years, which would entail fixing the multiplier at 11, as per the decision in ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***.

14. To fix the monthly income of the deceased, no material to substantiate the earnings of the deceased has been filed, but for a statement that he was earning a sum of Rs.10,000/- per month. Therefore, in the above backdrop, applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** fixing a notional income of Rs.4,500/- and adding future prospects at 15%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** as has been done by the Tribunal is perfertly in order. Accordingly, the the total income per month is quantified at Rs.5,175/-. Deducting 1/5th towards the personal expenses of the deceased, the

loss of income to the family is arrived at Rs.4,140/- per month and the deceased being aged about between 51 to 55 years above, as fixed by this Court, adopting the multiplier of 11 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is arrived at Rs.4,140/- * 12 * 11 = Rs.5,46,480/-, which is worked out as follows :-

Loss of Income	**Amount (in Rs.)**
Notional income (Per month)	4,500
Add: Future Prospects (Rs.4,500 x 15%) (Per month)	675
	5,175
Less: Personal expenses (1/5th) (Rs.5,175/- x 1/5) (Per month)	1,035
	4,140
Notional income (per annum) (Rs.4,140/- x 12)	49,680
Multiplier	11
Total	**5,46,48 0**

15. A sum of Rs.25,000/- has been awarded to the first wife of the deceased under the head of "loss of consortium", which is meagre and applying the ratio laid down in *Pranay Sethi case,* the same is enhanced to a sum of Rs.40,000/-. The Tribunal has awarded a sum of Rs.20,000/- to the first wife of the deceased and her son under the head of "loss of love and affection".

However, it is to be pointed out that compensation under the head "Loss of Love and Affection" is not to be granted to the first wife, when she is given loss of consortium and, accordingly, a sum of Rs.40,000/- to each of the children alone, totalling to a sum of Rs.2,00,000/- (40,000/- * 5) would be just compensation as fixed in *Pranay Sethi case.* Further, a sum of Rs.5,000/- has been awarded under the head of "transportation", which is just and reasonable and it does not need any interference of this Court. Further a sum of Rs.5,000/- has been granted under the head “funeral expenses”, which is on the lower side and the same is enhanced to a sum of Rs.15,000/-. No compensation has been awarded under the head “loss of estate” and therefore a sum of Rs.15,000/- is awarded under the said head.

16. While two different compensation have been awarded in the two petitions, however, respondents 1 and 2 in CMA No.64/2014 not being the legally wedded wife of the deceased but the fact remains that respondents 3 to 6 in CMA No.64/2014 being the legal heirs of the deceased, this Court is of the considered view that the compensation awarded in both the petitions could be consolidated and compensation could be awarded to the 1st respondent in CMA No.2695/2013 and the legal heirs, viz., respondents 2 and 3 in CMA

No.2695/2013 and respondents 3 to 6 in CMA 64/2014.

17. In the above circumstances, the compensation awarded by the Tribunal in M.C.O.P.No.396 of 2010 dated 20.03.2012 is modified as under :-

Heads	**Awarded by the Tribunal (Amount in Rs.)**	**Awarded by this Court (Amount in Rs.)**
Loss of Income	**4,68,000/-**	**5,46,480/- (enhanced)**
Loss of love and affection (40,000/- * 5)	**20,000/-**	**2,00,000/- (enhanced)**
Loss of consortium (for the 1st wife of the deceased)	**25,000/-**	**40,000/- (enhanced)**
Transportation expenses	5,000/-	5,000/-
Funeral Expenses	**5,000/-**	**15,000/- (enhanced)**
Loss of Estate	**-**	**15,000/-**
Total	**5,23,000/-**	**8,21,480/-**

18. In the result, while CMA No.2695/2013 and 64/2014 are allowed in part by consolidating the compensation awarded in MCOP Nos.396/2010 and 1600/2008 by the Addl. Subordinate Court, Vridhachalam and 1st Addl. District & Sessions Court, Cuddalore, into a single compensation, which shall be payable to the 1st respondent in CMA No.2695/2013 and the legal heirs, viz., respondents 2 and 3 in CMA No.2695/2013 on the file of the Addl. Subordinate

Court, Vridhachalam and respondents 3 to 6 in CMA 64/2014 on the file of 1st Addl. District & Sessions Court, Cuddalore. Accordingly, the compensation awarded in MCOP Nos. 396/2010 and 1600/2008 are set aside and instead a consolidated compensation is awarded in CMA No.396/2013, a portion of which would also enure to respondents 3 to 6 in MCOP No.1600/2008 on the file of 1st Addl. District & Sessions Court, Cuddalore. The appellant insurance company is directed to deposit the aforesaid amount of Rs.8,21,480/- along with interest at the rate of 7.5% per annum from the date of claim petition in MCOP No.396/2010 till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Presiding Officer, Addl. Subordinate Court, Vridhachalam, is directed to transfer the proportionate share of respondents 1 to 3 in CMA No.2695/13 directly to the bank account of the respective respondents through RTGS within a period of two weeks thereafter.

19. Insofar as the apportionment of the amount is concerned, while the legal heirs of the deceased, viz., respondents 2 and 3 in CMA No.2695/2013 on the file of Add. Subordinate Court, Vridhachalam upon establishing their

majority through documentary evidence and respondents 3 to 6 in CMA No.64/2014 on the file of 1st Addl. District & Sessions Court, Cuddalore, would be entitled to a sum of Rs.1,00,000/- each along with proportionate interest, the 1st respondent in CMA No.2695/2013 on the file of Add. Subordinate Court, Vridhachalam, would be entitled to the balance sum along with proportionate interests and costs. In view of the compensation being consolidated, but the original petitions having been filed before two different courts, the respondents 3 to 6 in CMA No.64/14 are directed to file necessary application in MCOP No.396/2010 on the file of the Additional Subordinate Court, Vridhachalam within a period of six weeks from the date of receipt of a copy of this order for claiming the portion of the compensation ordered by this Court in their favour, along with a copy of this order, and upon such application being filed, the Presiding Officer, Addl. Subordinate Court, Vridhachalam, is directed to verify the majority of the respective legal heirs viz.respondents 3 to 6 in C.M.A.No.64/14 and subject to their attaining majority, transfer the proportionate share of the said respondents 3 to 6 in CMA No.64/14 directly to the bank account of the said respondents within a period of two weeks thereafter, or else with regard to any of the respondents being minors deposit the same in an interest bearing account until they attain majority and, thereafter disburse the same to the said respondents, on their attaining majority.

M.DHANDAPANI, J.

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20. The civil miscellaneous appeals are allowed in part with the aforesaid observation and direction. There shall be no order as to costs in these appeals. Consequently, connected miscellaneous petitions are closed.

05.10.2023

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Speaking Order : Yes/No
Index : Yes/No
NCC : Yes/No

To

1. Motor Accidents Claims Tribunal, Additional Subordinate Court, Virudachalam.
2. Motor Accidents Claims Tribunal, 1st Additional District and Sessions Judge, Cuddalore.
3.The Section Officer, V.R. Section, High Court, Madras.

C.M.A.Nos.2695 of 2013 and 64 of 2014