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C.M.A.No.763 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.03.2023

Delivered on: 20.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.No.763 of 2020

&

C.M.P.No.6233 of 2023

1.Virudhambal

2.Anjalai

3.R.Boopathy

4.Valli

5.Lakshmi

... Appellants

Vs.

1.E.Muthulakshmi

2.Divisional Manager

United India Insurance Co. Ltd

D.O.No.13A, Nethaji road

Cuddalore-607001.

... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988

to set aside the judgment and decree dated 09.01.2020, made in M.C.O.P.

1/23



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No.2333 of 2015 on the file of the Motor Accident Claims Tribunal(Principal District Judge, Cuddalore).

For Appellants : Mrs.Ramya V.Rao

For Respondents : Mr.M. Krishnamoorthy for R2

No Appearance for R1

JUDGMENT

Claimants before the Motor Accident Claims Tribunal(Principal District Judge, Cuddalore) in M.C.O.P.No.2333 of 2015 are the appellants in the present Civil Miscellaneous Appeal.

2. M.C.O.P.No.2333 of 2015 was filed by the appellants as claimants being sisters and sisters-in-law of the deceased Ramamoorthy, who died as bachelor, in the motor vehicle accident that occurred on 18.04.2015, claiming compensation to the tune of Rs.15,00,000/-.

3. It is the case of the appellants that on 18.04.2015, at about 19.30 hrs the deceased was walking on the extreme left of Trichy-Chennai National



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Highway and near Sastha Garden at Veppur, the 1st respondent's vehicle bearing registration No.TN-01-V-6807, driven at great speed and in a rash and negligent manner came from behind and dashed against the deceased, resulting in the said Ramamoorthy sustaining fatal injuries. The 1st, 3rd and 5th appellants are sisters of the deceased Ramamoorthy and the 2nd and 4th appellants are the wives of the deceased brothers of said Ramamoorthy. It is stated that all of them were dependent on the deceased and since Ramamoorthy died at the prime age of 40 years and as a bachelor, earning Rs.15,000/- per month, being employed as a driver, the respondents were liable to compensate the appellants to the tune of Rs.15,00,000/-.

4. The 2nd respondent insurance company filed a counter, denying that the appellants were legal heirs and dependants. According to the insurance company, only dependants could claim compensation and in the present case, none of the appellants were dependent on the deceased and therefore, the insurance company prayed for the dismissal of the M.C.O.P itself.



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5. Before the Tribunal, the 3rd appellant was examined as P.W.1 and one Mr.Mariappan was examined as P.W.2. Exs.P1 to P6 were marked on the side of the appellants. On the side of the respondents, no oral or documentary evidence was adduced.

6. The Tribunal found that the accident occurred only because of the rash and negligent driving of the vehicle belonging to the 1st respondent.

7. In so far as compensation, the Tribunal held that the petitioners did not produce any documentary evidence to prove the income of the deceased and also held that the appellants were not dependent on the income of the deceased and proceeded to dismiss the M.C.O.P itself.

8. Aggrieved by the said dismissal of the M.C.O.P, claimants are before this Court by way of the above Civil Miscellaneous Appeal.



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9. The grounds of challenge are:

(a) The Tribunal grossly erred in holding that merely because claimants were living in separate houses and therefore they are not dependent on the deceased.

(b) The legislature has used only the word “Legal Representatives” in Sec.166 of the Motor Vehicles Act, 1988 and therefore all legal representatives of the deceased are entitled to seek compensation and consequently the Tribunal erred in holding that the appellants were not dependants and therefore disentitled to claim any compensation.

10. The appellants have also filed C.M.P.No.6233 of 2023 under Or.41 R.27, C.P.C to permit them to file the relationship certificate to show that the deceased had three sisters who are the appellants 1,3 and 5. In the affidavit filed in support of the said petition, the 1st petitioner/appellant has stated that the relationship certificate was necessitated because the Tribunal had held that the appellants have not proved that they were dependants of the deceased.



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11. There is no serious objection on the side of the counsel for the 2nd respondent insurance company to permit the relationship certificate being taken on file. This Court also keeping in mind that the Motor Vehicles Act is a beneficial legislation, the very strict rigour of Or.41 R.27 C.P.C cannot be pressed into service and a more liberal approach has to be adopted. Accordingly, this Court allows C.M.P.No.6233 of 2023 and the relationship certificate dated 04.12.2020 is marked as Ex.P7.

12. Before dwelling into the quantum, it is necessary to first decide as to whether the appellants are entitled to seek compensation. The learned counsel for the appellants has relied on the following judgments:

1. ***Gujarat State Road Transport Corporation, Ahmedabad Vs. Prabhatbhai and another***, reported in ***AIR 1987 SC 1690***;
2. ***Oriental Insurance Co. Ltd Vs. Rangammal and Ors***, reported in ***2010 (23) CTCOL 558, (Mad)***;
3. ***Branch Manager, ICICI Lombard Insurance Co., Mumbai Vs. Kaliyamoorthy and Ors***, reported in ***2016(1) TNMAC 453(DB)***;



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4. ***P.S.Somanathan and Ors Vs. District Insurance Officer and another***, reported in ***(2011) 3 SCC 566***;

5. ***N.Jayasree and Others Vs. Chola mandalam Ms General Insurance Company Ltd***, reported in ***2021 SCC Online SC 967***;

6. ***National Insurance Company Limited Vs. Birender and Others***, reported in ***(2020) 11 SCC 356***;

13. Per contra, learned counsel appearing for the insurance company contended that only dependants could seek for compensation and merely because the word “Legal Representative” is used in the legislation, it does not automatically mean that all legal representatives would become entitled to seek for compensation and Courts have consistently held that only dependants are entitled to seek compensation in motor accidents cases. In support of his contentions, learned counsel for the respondent/insurance company relied on the following judgments:

1. ***United India Insurance Co. Ltd Vs. Ramesh Singh and Ors***, reported in ***2018 ACJ 1686***;



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2. *Mrs.Hafizun Begum Vs. Md.Ikram Heque and Ors*, reported in **2007 (2) TNMAC 143 (SC)**

3. *The Managing Director, Tamil Nadu State Fast Transport Corporation Vs. Pachiappan and Ors*, dated 22.04.2009 in C.M.A.No.1448 of 2004.

4. *New India Assurance Co. Ltd Vs. Sasikala Devi (deceased)* reported in **2011 (2) TNMAC 152 (DB)**,

Learned counsel further contended that no fault liability amount could be paid by the insurance company and nothing more.

14. This Court has paid anxious and careful consideration to the rival submissions and also ratio laid down in the above cited judgments.

15. Sec.166 of the Motor Vehicles Act, 1988 reads as follows:

166.Application for compensation.—

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



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(a) by the person who has sustained the 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: Provided 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. 1[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed: Provided that where no claim for compensation under section 140



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is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.]
2[***] 3[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]”

16. Sec.166(1) (c) entitles “ all or any of the legal representatives of the deceased ” to make an application for compensation in respect of an accident.

17. It is to be very importantly noted that even though the Motor Vehicles Act has underwent amendments by way of M.V.Amendment Act, 1994, M.V.Amendment Act, 2000, M.V.Amendment Act, 2001, M.V.Amendment Act, 2015 and finally M.V.Amendment Act, 2019, the legislature has not touched Sec.166 to clarify or mean that only dependants would be entitled to seek compensation. The use of the term “Legal Representatives” continues till date.



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18. Now falling back on the various decisions referred to and relied on by both the counsel for the appellants as well as the counsel for the 2nd respondent/ insurance company:

(1) In the case of ***Gujarat State Road Transport Corporation, Ahmedabad Vs. Prabhatbhai and another***, reported in ***AIR 1987 SC 1690***, the Hon'ble Supreme Court has specifically held that though the expression “Legal Representative” has not been defined in the Act, it would ordinarily mean 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. In the said case, the Hon'ble Supreme Court has held that the brother of the deceased would be entitled to maintain a petition under the Motor Vehicles Act. The Apex Court also observed that in an Indian family, brothers, sisters and brother's children and even foster children live together and they may be dependent upon the bread winner of the family and when such bread winner dies on account of a motor vehicle accident, it would not be just and proper to deny compensation to them.

(2) In the case of ***Oriental Insurance Co. Ltd Vs. Rangammal and***



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Ors, reported in **2010 (23) CTCOL 558, (Mad)**, this Court referring to definition of “Legal Representative” under Sec. 2(11) of Code of Civil Procedure, held that liability under Sec. 140 of the Motor Vehicles Act does not cease merely because there is absence of dependency and held that right to file a claim petition has to be considered in the background of the right to entitlement.

(3) In the case of **Branch Manager, ICICI Lombard Insurance Co., Mumbai Vs. Kaliyamoorthy and Ors**, reported in **2016(1) TNMAC 453(DB)**, the Division Bench of this Court held that even a married sister of the deceased can maintain a claim for compensation. Referring to the use of “Legal Representative” in Sec.166 of the Motor Vehicles Act, 1908, the Court also held that a married sister/daughter is a legal representative as per the Law of Succession and even though she may not be dependent on the income of the deceased but her claim to compensation cannot be shut out because there is always a probability of monetary assistance from the deceased.

(4).In the case of **National Insurance Company Limited Vs. Birender and Others**, reported in **(2020) 11 SCC 356**, the Apex Court reiterated that it



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is settled position that “ all or any of the legal representatives of the deceased” can move an application for compensation U/s. 166(1)(c) and consequently even a major married and earning son of the deceased would be entitled to apply for compensation. The Apex Court also held that it is the bounden duty of the Tribunal to consider the application irrespective of whether the legal representatives were fully dependent on the deceased or not.

5. In the case of *N.Jayaasree and Others Vs. Cholamandalam Ms General Insurance Company Ltd*, reported in *2021 SCC Online SC 967*, the Apex Court held that the term “Legal Representative” should be given a wider interpretation for the purposes of Chapter 12 of the Motor Vehicles Act and should not be confined only to spouse, parents and children of the deceased.

6. In the case of *Smt.Manjuri Bera Vs. Oriental Insurance Co. Ltd*, reported in *2007 10 SCC 643*, it was held that the definition of “Legal Representative” cannot be held to be confined to only legal heirs and that even a person who is not a legal heir may be competent to inherit the property



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of the deceased and represent the estate of the deceased. The Apex Court further held that the liability U/s.140 of the Motor Vehicles Act does not cease because there is absence of dependency and that the right to file a claim petition has to be considered in the background of right to entitlement and while assessing quantum, the multiplier system should be applied because of deprivation of dependency. Concluding, the Hon'ble Supreme Court held that where a legal representative who is not a dependant, files an application for compensation, the quantum cannot be less than the liability referable to Sec.140 of the Act and even if there is no loss of dependency, the claimant, if he or she is a legal representative would still be entitled to compensation, the quantum of which shall not be less than the liability flowing from Sec.140 of the Act.

19. What emerges from the decisions relied on by the counsel for the 2nd respondent/insurance company is :

(1) In the case of ***Mrs.Hafizun Begum Vs. Md.Ikram Heque and Ors***, reported in ***2007 (2) TNMAC 143 (SC)***, the Hon'ble Supreme Court held



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that if there is no dependency, Sec.140 of the Act would come into play and only the no fault liability component can be awarded.

(2) Similarly in C.M.A.No.1448 of 2004, this Court also directed the insurance company should pay only the no fault liability amount of Rs.50,000/- as provided U/s. 140 of the Motor Vehicles Act.

(3) In the case of ***United India Insurance Co. Ltd Vs. Ramesh Singh and Ors***, reported in ***2018 ACJ 1686***, learned Single Judge of Uttarkhand High Court at (Nainital) held that in that in the facts of the said case before it, that none of the claimants are dependent on the deceased.

4. In the case of ***New India Assurance Co. Ltd Vs. Sasikala Devi (deceased)*** reported in ***2011 (2) TNMAC 152 (DB)***, this Court has held on the facts of the said case that the brother of the deceased was an independent earning member and even in his evidence he never stated that he was dependent on the income of the deceased and on such facts of the case, this Court held that dependency was not proved and the claimant was not entitled to compensation for the death of his deceased brother.



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20. This Court has applied its mind to the various decisions relied on by both the counsel for the appellants as well as the counsel for the 2nd respondent.

21. At the risk of repetition, it would be relevant to state that the Motor Vehicles Act being a beneficial piece of legislation, a wider interpretation of the term “Legal Representative” will have to be applied while deciding compensation cases.

22. The issue whether the claimants were dependent on the deceased is a matter of fact which will have to be decided in the peculiar facts and circumstances in each case before the Court.

23. In the instant case, three sisters of the deceased and wives of two brothers of the deceased approached the Motor Accident Claims Tribunal seeking compensation for the death of one Ramamoorthy, who died as a bachelor. It is the specific case of the claimants/appellants that they were



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dependent on the deceased Ramamoorthy. The appellants 2 and 4 are only wives of deceased brothers of said Late Ramamoorthy. At best they can be dependent on their respective husbands, but it cannot be stretched so far to mean and include that they would also qualify to be dependants in order to ordinarily claim compensation for the death of their husband's brother who died as bachelor. Therefore, this Court holds that only the sisters who are appellants 1,3 and 5 are entitled to seek compensation. There is nothing to show how and to what extent the appellants 2 and 4 were dependent on the deceased. This Court has also gone through the documents as well as the oral evidence adduced before the Tribunal and does not find any material supporting the claim of the appellants 2 and 4. At best, they would be entitled to the no fault liability. Accordingly, this Court awards a sum of Rs.50,000/- to each of the appellants 2 and 4.

24. The third appellant who examined herself as P.W.1 has specifically stated in her proof affidavit that her brother was looking after the claimants and he was monetarily helping them to a great extent. To such a statement in



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chief examination, not even a suggestion is put to P.W.1 that the appellants were not dependent on the deceased Ramamoorthy. The questions that were put to her in cross examination were only with regard to her not filing any proof in support of his income and non filing of ration card to show that the appellants were residing with Ramamoorthy. It is not necessary that for a person to be dependent on someone's income, both persons should live under the same roof. It is common knowledge that an entire family can be supported by a particular individual, who may be living far apart, even in another corner of the globe. Therefore, the test is not living in the same roof but only as to whether the claimants were actually dependent on the deceased. In this regard, this Court finds that the positive evidence of the P.W.1 has gone totally uncontroverted and the Tribunal clearly fell in error in holding that the appellants did not prove dependency on the income of the deceased. This Court, therefore, has to necessarily set aside the dismissal of the M.C.O.P on this preliminary ground that the appellants were not dependents and therefore were not entitled to compensation, atleast in so far as appellants 1,3,4 and 5.

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25. Also, viewing this from a different perspective, say for instance, a father of a deceased male is not a Class I legal heir he is only a Class II legal heir under the Hindu Succession Act. However, he qualifies to be a legal representative of his deceased son, if he was dependent on his deceased son and he would also be entitled to seek for compensation. Therefore, to clarify, any legal representative would be entitled to make a claim for compensation in respect of the motor accident resulting in death. However, it is to be remembered that being entitled to maintain an application for compensation would not automatically mean that the said claimant would be entitled to compensation. The onus will be on the claimant who approaches the Court to show that he was dependent on the income of the deceased and therefore his mere entitlement to file a claim petition would blossom into an award for compensation. This Court has already found that the sisters/appellants 1,3 and 5 were dependent on the income of the deceased and therefore they are entitled to not only maintain the claim petition but also to just compensation on account of the death of their brother deceased Ramamoorthy.



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26. Now proceeding to fix the compensation payable to the claimants 1,3,4 and 5, this Court at the very outset would like to state that applicability of Sec. 140 of the Act as contended by the counsel for the 2nd respondent insurance company would not come into play in this case. This Court has already found that the claimants are dependent on the income that was earned by the deceased, there is no necessity to apply Sec.140 of the Motor Vehicles Act and award only no fault liability to appellants 1,3 and 5.

27. Now coming to the quantum of compensation, admittedly it is a case of a fatal accident, the deceased was aged 40 years and he was a driver and the income said to have been earned by him at the time of accident was Rs.15,000/- per month. As already discussed, the claim petition was dismissed only on the sole ground that the appellants were not dependents of the deceased Ramamoorthy. The appellants have not filed any documentary evidence in support of their claim that the deceased Ramamoorthy was earning Rs.15,000/- per month. However, considering the fact that he was a driver and the accident in the year of 2015, a sum of Rs.6,000/- can be taken



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as monthly notional income of the deceased. In fine, Pecuniary loss is arrived at in the manner following:

Monthly notional income : Rs. 6,000/-

Future Prospects at 25% : Rs. 1,500/-

Applying a Multiplier of 15 : $7,000 \times 12 \times 15 = \text{Rs.} 13,00,000/-$

50% has to be deducted for personal expenses of the deceased, since he was a bachelor and the claimants are only the sisters of the deceased. Thus the award under the head pecuniary loss is Rs.6,75,000/-. In view of the very peculiar facts of this case, this Court does not deem it fit to award any further compensation to the sisters under the other heads.

28. In fine the Civil Miscellaneous Appeal is allowed in part entitling the appellants 1,3 and 5 to a total award to the tune of Rs.6,75,000/-, each of them being entitled to Rs.2,25,000/- and the appellants 2 and 4 to Rs.50,000/- each, together with interest at 7.5% from the date of accident till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the



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award amount within a period of eight weeks from the date of receipt of a copy of this order. No costs.

20.04.2023.

Internet:Yes

Index:Yes/No

Neutral Citation:Yes/No

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To

1. The Principal District Judge
Motor Accident Claims Tribunal
Cuddalore

2.The Section Officer
V.R.Section
High Court, Madras

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P.B.BALAJI, J.,
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Pre-delivery judgment in
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