



C.M.A.No.1629 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.1629 of 2021

and

C.M.P.No.8557 of 2021

The Regional Manager,
Andhrapradesh State Road Transport Corporation,
Tirupathi,
Andhrapradesh.

... Appellant

vs.

1.K.Lakshmi
2.Amruthamma
3.Masthanamma
4.Lavakumar

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against Award and Decree dated 18.10.2019 passed by the Hon'ble Special District Judge, Tiruvallur in M.C.O.P.No.3/2019 is praying to set aside the above said Award and Decree against this appellant.

For Appellant : Mrs.G.V.Shoba

For Respondents : Mr.R.Kumaravel

JUDGMENT

The sole respondent namely the Regional Manager, Andhra Pradesh State Road Transport Corporation, Tirupathi, has preferred



C.M.A.No.1629 of 2021

this appeal against the judgment and decree passed in M.C.O.P.No.3/2019, dated 18.10.2019 on the file of Motor Accident Claims Tribunal(Special District Judge), Tiruvallore, challenging the quantum.

2. The legal heirs of one Mohan Reddy who died in the road accident occurred on 06.06.2018 filed the above said petition, claiming compensation of Rs.30,00,000/- under Section 166 of Motor Vehicles Act and Rule (3) of Motor Accident Claims Tribunal Rules. The learned Tribunal after hearing both sides arguments and upon perusal of oral and documentary evidence, has passed an award for a sum of Rs.10,49,660/- payable with interest at 7.5% p.a., from the date of petition (03.01.2019) till the date of deposit within two months from the date of the judgment. Out of the award amount, 1st and 4th respondents / claimants 1 and 4 being the children of the deceased were ordered to receive Rs.1,00,000/- each and 2nd and 3rd respondents / claimants 2 and 3 being the wives of the deceased were ordered to receive Rs.4,24,830/- each.



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3. Mrs.G.V.Shoba, learned counsel appearing for the appellant/Transport Corporation would argue that the 1st and 4th respondent/Claimants 1 and 4 being the married daughter and grown up son of the deceased cannot be considered as dependents and only one wife can be treated as his dependent. She would further argue that while determining the compensation the Tribunal has deducted 1/4th for personal expenses which is incorrect as the 1st respondent is a married daughter, 3rd respondent is a second wife and 4th respondent is a married son of the deceased, half of the income arrived at to be deducted and not 1/4th as done by the Tribunal.

4. Per contra, the learned counsel appearing for the respondents 1 to 4 / Claimants 1 to 4 would argue that all the four claimants are the dependents of the deceased and the Tribunal has rightly passed an award in favour of all the respondents/claimants and the apportionment details as mentioned supra needs no interference.

5. From the perusal of the records, it appears that the 1st petitioner is married and residing at Elakatur, Chithoor District, Andhra Pradesh. The 2nd and 3rd petitioners being wives of the deceased had



C.M.A.No.1629 of 2021

been residing in Chithoor District in different places. The 4th petitioner being the son of the deceased Mohan Reddy aged 35 years is said to be residing at Oothukkottai.

6. The Hon'ble Supreme Court has held in respect of the deductions to be made towards personal and living expenses in complete. The pivot issue in this appeal is that whether a married daughter and major son are dependents or not ? and Whether they are entitled to be paid any compensation under Motor Vehicles Act or not ?

7. Similar question arose in ***Cholan Roadways Corporation Ltd., v. Pavun Raj and others*** reported in ***2000 ACJ 616***, wherein, this Court had an occasion to deal with similar issue and it was held that the claimant being the son of the deceased through his 1st wife is considered as a legal representative, then it has to be held that he is entitled to become a party in the main petition filed by the other legal representatives. The compensation granted to the married son as he is also one of the legal representatives was held to be correct and the appeal was dismissed.



WEB COPY 8. A careful reading of Section 2 of Motor Vehicles Act, 1988, wherein, there is no definition given for the term 'legal representatives'. To have a proper understanding, it is relevant to go through the Section 166 of Motor Vehicles Act, 1988. The said Section is extracted hereunder:

"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 – (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.

[Provided further that where a person accepts compensation under Section 164 in accordance with the



procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.]

(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 :

(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under [Section 159] as an application for compensation under this Act.

(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not."

9. The 1st proviso deals about the legal representatives. It is



C.M.A.No.1629 of 2021

interesting to note that it is prior to the amendment in 1970, application

was to be made by all the legal representatives. By the amendment,

the application can be made by all or any of the legal representatives. It

has to be taken note of such application is on behalf of and for the

benefit of all the legal representatives of the deceased. It has to be

noted that the legal representatives who have not joined as a

claimants, they shall be impleaded as respondents to the application.

Therefore, the legislature does not distinguish whether they are

dependent or not dependent of the deceased. Hypothetically speaking

where mother may maintain her major son for some reasons. In

Section 166 of the Motor Vehicles Act, all the representatives of the

deceased if they have not joined in the application for compensation,

they shall be impleaded as the respondents. In this regard, the Hon'ble

Supreme Court in **Gujarat State Road Transport vs. Ramanbhai**

Prabhatbhai & Another reported in **1987 ACJ 561**, wherein, it has

been held that every legal representatives who suffers on account of

the death of a person due to motor accident should have remedy to

realise compensation under Section 110 A of the Motor Vehicles Act.



C.M.A.No.1629 of 2021

10. In **Megjibhai Khimji Vira and Anr. vs Chaturbhai Taljabhai**

And Ors., reported in **1977 ACJ 253**, the Gujarat High Court has held that even a nephew is entitled to maintain a claim petition being the sole relative and the legal representative of the deceased. The provisions have to be ordinarily understood in a simple meaning and in clear terms it postulate that all the legal representatives can maintain a claim under Section 166 of Motor Vehicles Act.

11. In the facts and circumstances, the arguments of the learned counsel appearing for the appellant/Transport Corporation is too technical. When the basic provision under Motor Vehicles Act namely Section 166 mandates that if some of the legal representatives have not joined in the application for compensation, the legal representatives who have not so joined shall be impleaded as respondents to the application. Therefore, Section 166 of the Motor Vehicles Act gives a clear indication in this regard. More so, daughter and the son are class-1 legal heirs under Section 8 of the Hindu Succession Act. In Hindu Society, father till his death often takes care of the married daughter and the major son also for sometimes.



C.M.A.No.1629 of 2021

WEB COPY 12. With regard to this aspect, it is relevant to refer to the decision of the Hon'ble Supreme Court in ***Manjuri Bera v. The Oriental Insurance Company Ltd., and Others*** reported in ***MANU/SC/1978/2007***, wherein the ratio decidendi in the case is that "even if there is no loss of dependency, the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140.

13. Therefore, it could be seen that all the four respondents/claimants names have been mentioned in the legal heir certificate-Ex.P6. Therefore, based on the observations made by the Hon'ble Supreme Court, this Court is of the considered view that respondents No.1, 3 and 4 being the legal heirs of the deceased cannot be excluded from granting of compensation. Henceforth, the arguments of the learned counsel for the appellant to the effect that the respondents 1, 3 and 4 cannot be considered as legal representatives of the deceased Mohan Reddy is untenable and consequently, stands rejected.



C.M.A.No.1629 of 2021

14. As per law laid down by the Hon'ble Supreme Court in

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Smt.Sarla Verma & Ors., v. Delhi Transport Corporation &

Another reported in **2009 (2) TN MAC 1 (SC)**, if the dependents are 4 to 6, 1/4th amount towards personal expenses of the deceased to be deducted from the take home pay. Therefore, the arguments of the learned counsel for the appellant that only half of the amount towards personal expenses of the deceased from his take home pay should have been deducted is also untenable and stands rejected. Therefore, as the judgment and decree passed by the Tribunal is a well reasoned order which needs no interference.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the Award and Decree dated 18.10.2019 in M.C.O.P.No.3 of 2019 passed by the learned Special District Judge, Tiruvallur is hereby confirmed. No costs. Consequently, connected civil miscellaneous petition is closed.

20.06.2023

Index : Yes/No
Speaking / Non-speaking order
ssn



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C.M.A.No.1629 of 2021

To:

1. The Motor Accident Claims Tribunal,
Special District Judge, Tiruvallur.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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C.M.A.No.1629 of 2021

R.KALAIMATHI, J.,
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C.M.A.No.1629 of 2021
and
C.M.P.No.8557 of 2021

20.06.2023