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C.M.A. No.3560 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A. No.3560 of 2014

and

M.P. No.1 of 2014

The Branch Manager,
National Insurance Company Limited,
Branch Office, Second Floor,
81-D, Chetty Street, Opposite Bus Stand,
Tiruchengode, Namakkal District.

... Appellant

Vs.

1.Muniappa

2. The Managing Partner,
M/s.Mohan Transports,
No.10, SSS Building,
Chamrajpet, Bangalore.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgement dated 19.03.2014 made in M.C.O.P. No.155 of 2011, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Hosur.



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For Appellant : M/s.N.B.Surekha

For respondents : M/s.Mukund R.Pandiyan of R1

: Ex-parte

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the insurance company challenging the award passed in M.C.O.P. No.155 of 2011 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Hosur dated 19.03.2014, on the ground that, the claimant is not dependent of the deceased Marakka who died in the road accident.

2. The parties are referred to hereunder according to the status and ranking before the Tribunal.

3. The deceased in this case namely Marakka was died in the fatal accident while awaiting for crossing the road on 14.04.2021. The elder brother of the deceased claiming himself as a dependant claimed compensation and the Tribunal has awarded Rs.3,44,000/- along with



interest.

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4. The first respondent owner of the lorry has not contested the claim and remained exparte before the Tribunal.

5. The second respondent insurance company alone contested the claim and objected that the deceased was aged more than 55 years and the claimant is not the dependant who is living separately at Onnalvadi Village and opposed awarding compensation to the claimant.

6. Based on the evidence placed on record, the Tribunal in Point No.1 has considered the negligence aspect and held that the driver of the first respondent's vehicle is responsible for the accident. In Point No.2, the Tribunal has quantified the compensation and awarded a sum of Rs.3,44,000/- as compensation. The Tribunal has not considered the contention of the insurance company regarding dependancy of the claimant. Aggrieved over the same, this Civil Miscellaneous Appeal has been filed.

7. Learned counsel for the insurance company has submitted that the



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claimant herein is the elder brother who is having separate family and living separately away from the village of the deceased. Even though, claimant is a brother, he is also aged more than 65 years at the time of accident and he could not be considered as a dependant and he is only entitled of loss of estate. Hence, prays to modify the award. Learned counsel in support of his contention relied on the judgment of the Hon'ble Apex Court in ***Manjuri Bera vs. The oriental Insurance Company Ltd., & Another*** reported in CDJ 2007 SC 374 and ***National Insurance Company vs. Seeniammal and others*** in CMA.MD.No.1404 of 2008 dated 30.03.2021.

8. In this case the elder brother who was aged about more 65 years claiming compensation for the death of his sister who was aged about 58 years at the time of accident. In the cross examination also it is elicited that he is only brother and has not produced any legal heir certificate or any other document to show that the deceased was living along with claimant. The deceased was a widow and not having child. The Hon'ble Apex Court in ***Manjuri Bera vs. The oriental Insurance Company Ltd., & Another*** cited Supra has considered the payment of compensation to the married daughter who is not a legal heir, under the category of legal representative she has



claimed compensation and at para 13 has held that the dependant who is legal representative of the deceased is entitled for compensation as per Section 140 of Motor Vehicles Act and the relevant portion is extracted hereunder:

“13. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependancy. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency. Section 165 of the Act also throws some light on the controversy. The explanation includes the liability under Sections 140 and 163-A. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act.”

9. The Division Bench of this Court in New India Assurance Co. Ltd., vs. Sasikala Devi reported in 2011 (2) TNMAC 152 (DB) has followed the above judgment of Apex Court and awarded compensation under Section 140 of the Motor Vehicles Act to the claimant therein.



10. The Hon'ble Apex Court in ***Montford Brothers of St. Gabriel***

and Another vs. United India Insurance and Another [(2014) 3 SCC 394]

has considered the entitlement of eligibility of Society to claim compensation for the death of one of its members, by invoking Section 166 of the Motor Vehicles Act, 1988 and by interpreting Section 2(11) of CPC and Clause (c) of Rule 2 of the Mizoram Motor Accident Claims Tribunal Rules, 1988 has held in paragraph Nos.11 &12 as follows:

"11. ...In the case of Gujarat State Road Transport Corporation, Ahmedabad v. Raman Bhai Prabhatbhai and Anr. MANU/SC/0469/1987 : AIR 1987 SC 1690. In that case, covered by the Motor Vehicles Act of 1939, the claimant was a brother of a deceased killed in a motor vehicle accident. The Court rejected the contention of the Appellant that since the term 'legal representative' is not defined under the Motor Vehicles Act, the right of filing the claim should be controlled by the provisions of Fatal Accident Act. It was specifically held that Motor Vehicles Act creates new and enlarged right for filing an application for compensation and such right cannot be hedged in by the limitations on an action under the Fatal Accidents Act. Paragraph 11 of the report reflects the correct philosophy which should guide the Courts interpreting legal provisions of beneficial legislations providing for compensation to those who had suffered loss.

"11. 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 110B 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 amongst the legal representatives for whose benefit an application may be filed under Section 110A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner 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 Taljabhai (MANU/GJ/0080/1977 : AIR 1977 Guj. 195) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110A of the Act if he is a legal representative of the deceased."

12. *From the aforesaid quoted extract it is evident that only if there is a justification in consonance with principles of justice, equity and good conscience, a dependant of the deceased may be denied right to claim compensation. Hence, we find no merit in the*



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submission advanced on behalf of the Respondent-Insurance Company that the claim petition is not maintainable because of the provisions of the Fatal Accidents Act."

11. Subsequently, a Division Bench of this Court in 2016 SCC online ***Branch Manager, I.C.I.C.I. Lombard General Insurance Company, Mumbai vs. Kaliyamoorthy and Others [2016 SCC Online Mad 6345]*** has considered the claim of the eligible married sister in claiming compensation under Motor Vehicles Act and after considering various decisions of the Apex Court, the Division Bench of this Court has concluded in paragraph Nos. 20 and 21 as follows:

"20. 'Legal Representative' ordinarily includes heirs as well as persons, who represent the estate of the deceased person or a person, on whom, the estate devolves on the death of an individual. Right to claim for compensation by any or all legal representatives under Section 166 of the Motor Vehicles Act is a legal right. It is an assertable right enforceable before Courts and administrative agencies, in its wider sense and therefore, a legal right has to be understood, as any advantage or benefit conferred upon a person by a rule of law; and having regard to the manner, in which, a provision has to be interpreted, as held by the Supreme Court in the decisions stated supra, this Court is of the view that the definition of "legal representatives" cannot be restricted to exclude married daughters/sisters, from making any claim under section 166 of the Act and consequently, restrict their claim, only under Section 140 of the Act, which has been engrafted in the statute, with a specific object of compensating all the legal representative, whether there is negligence, on the part



of the deceased or not. It is a "No Fault Liability" clause.

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21. *Courts have consistently held that what has been specifically excluded by a legislation in a provision cannot be imported into the section by the decisions of Court. By engrafting Section 166 of the Motor Vehicles Act, enabling all the legal representatives to make a claim, in contra distinction to, Section 2(1)(d) of the Workmen's Compensation Act, which enables only the persons enumerated in the said section to claim compensation under section 3 of the Workmen's Compensation Act, the intention of the legislature is clear and the definition, "legal representative" cannot be narrowed down to mean only "dependents", excluding married daughters/sisters."*

12. Recently, the Single Judge of this Court in ***National Insurance Company Limited vs. Karanamurthy and Others [2021 SCC Online Mad 78]*** has once again considered of previous judgments dealing with the eligibility of claiming compensation, who are not direct dependents of the victim of the accident, as distinguished by the Division Bench of this Court in Sasikala Devi's case cited supra and has held in paragraph Nos. 32 and 33 as follows:

"32 . *The facts of the present case is that, respondents 1 to 5 have not made claim petition as the legal representatives of the deceased. They have not stated anything about their dependency on the deceased. No doubt, the brothers and sisters in Indian Society have emotional and physical dependency on their siblings and in some case, financial dependency also. Unless and until, there is a plea on this regard, in the claim petition, the lateral entrant as legal representative of the claimant cannot have an*



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independent claim for compensation by enlarging the scope of claim petition. They can only represent the deceased original claimant. They are entitled to share what the original claimant is entitled. They enter the shoes of the original claimant. Just, because they have been allowed to continue the claim petition before the Tribunal, they cannot be treated as the original claimant to award compensation which they never sought for.

33 . The said dictum laid in Sasikala Devi (deceased) case by the Hon'ble Division Bench of this Court is intact and not been over ruled in any of the subsequent judgments. The submission of the learned counsel appearing for respondents 1 to 5 that the judgment of this Court in Sasikala Devi (deceased) case cited supra has been over ruled by virtue of the order passed by the Hon'ble Supreme Court in S.L.P.(civil) No. 29272 of 2012 is factually and legally in correct. The compromise entered in the Lok Adalat on 23.11.2013 cannot be taken as the judgment over ruling the Division Bench in Sasikala Devi (deceased) case. In the Catena of judgments, the Hon'ble Supreme Court has clarified that the orders passed in the SLP, without referring the merits of the case shall not be treated as precedent. The principle laid down in Sasikala Devi (deceased) case cited supra, passed by the Hon'ble Division Bench of this Court is intact and the SLP order dated 23.11.2013 is not on merits. The other judgments cited by the respondents are on different set of facts. If the legal representatives have made the original claim petition pleading their dependency on the accident victim, the judgments cited by the learned counsel appearing for respondents 1 to 5 have bearing and binding effect. Whereas, in this case, the original claim petition was not filed by the present respondents 1 to 5. Therefore, the principle laid in Sasikala Devi (deceased) case alone will apply."

13. In the case on hand, even though there is an admission by the claimants that his sister was living separately and he has given evidence to



the effect that the claimant and his sister used to visit regularly and his sister is not having children and thereby, she was only supported by the family of the claimants. The above evidences show that the deceased and the claimant were in emotional and physical dependency and due to sudden death of the deceased, the claimant has suffered with mental agony and also loss of love and affection of his sister.

14. As held by the catena of judgements of the Hon'ble Apex Court cited supra, the legal representatives, who intermeddles with the estate of the deceased person, is entitled to compensation, since Section 166 of the Motor Vehicles Act provides legal right to the claimants, who are the dependents or legal representatives of the deceased to claim compensation and the same is an assert enforceable before the Court in its wider sense. Thereby, restricting the claim only under Section 140 of the Act would defeat the object behind the Section 166 of the Motor Vehicles Act. Accordingly, this Court is of the view that the Tribunal has rightly awarded compensation to the claimant by invoking Section 166 of the Motor Vehicles act.

15. With regard to quantum of compensation, the Tribunal has



fixed Rs.6,000/- per month as income of the deceased, who is aged about 58 years at the time of the accident, however in the claim petition, the claimants have stated the monthly income of the deceased as Rs.5,000/- and in the absence of any proof, fixing Rs.6,000/- per month as notional income of the deceased is on the higher side and the same is modified to Rs.5,000/-, accordingly, after deducting 50% towards the personal and living expenses of the deceased, the total compensation under loss of income is calculated as **Rs.2,70,000/-** (Rs.5,000/- X 0.5 X 12 X 9).

16. The Tribunal has awarded compensation of Rs.10,000/- each under the head Transport Expenses and Funeral Expenses, since the transport expenses is inclusive in funeral expenses, awarding compensation separately under the head Transport Expenses is not permissible and the same is hereby rejected and the compensation awarded under the head Funeral Expenses is hereby modified to Rs.15,000/-. The Tribunal has not awarded compensation under the head loss of estate, hence this Court is inclined to award Rs.15,000/- towards Loss of Estate.

17. Accordingly, this Civil Miscellaneous Appeal is partly allowed.



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The second respondent is directed to deposit **Rs.3,00,000/- (Rupees Three Lakhs only)** together with interest at the rate of 7.5% per annum from the date of petition to the date of realization within a period of six weeks from the date of receipt of copy of this order, less the amount, if any, deposited. On such deposit, the claimant is entitled to withdraw the same by making appropriate application. No costs. Consequently, connected miscellaneous petition is closed.

09.08.2023

jai

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1.The Commissioner for Workmen's Compensation-I,
(Deputy Commissioner of Labour-I)
at DMS Compound Teynampet, Chennai-600 006.

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



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K. RAJASEKAR,J.

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