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C.M.A.No.325 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.325 of 2022
and CMP.No.2193 of 2022

United India Insurance Co. Ltd.,
I & II Floor, Fagoncham
26-A, CNC Road, Egmore
Chennai - 600 105.

Now at :

Motor Third Party Claims Hub
No.134, Silingi Buildings
IV Floor, Greams Road
Chennai - 600 006.

... Appellant / 2nd Respondent

Vs

1.R.Ponnuswami

2.P.Vijayalakshmi

3.M/s.Kiran Enterprises
No.152, P.H.Road
Kilpauk, Chennai - 600 010.

4.A.Anandhi (wife of deceased)

..... Respondents / Petitioners 1,2
& Respondents 3, 4

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the order and decretal order dated



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17.02.2020 in M.C.O.P.No.491 of 2008 passed by the Chief Judge, Court of Small Causes, MACT-Chennai, and allow the above CMA.

For Appellant : Mr.P.Sankaranarayanan

For Respondents : Mr.Devaraj Mahesh for R1
Mr.G.Thangavel for R4
R3 - Served (No appearance)
R2- Died (Dispensed with vide order dated 10.10.2023 in CMA.325/2022)

JUDGMENT

The Insurance Company has filed this appeal challenging the award of the Tribunal in MCOP.No.491 of 2008, on the ground that this is the second claim petition filed by the parents of the victim of the very accident, regarding which the wife of the victim had filed MCOP.No.404 of 2006, and that one of the claimants in the present MCOP, namely the mother of victim was in the party array of that MCOP. The contention of the appellant is that the claimants in both MCOP have also entered into a compromise, and this came to be marked as one of the exhibits in the present MCOP, however the Tribunal overlooking the same, has passed the award in MCOP.No.491 of 2008.

2. A certain Gomatheeswaran died on the spot while he was riding his motor



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cycle bearing Regn.No.TN 20 L 2289, when it was hit by a lorry bearing Regn.No. TN 21 Z 0977. He had left behind him surviving his wife Anandhi, mother Vijayalakshmi and father Ponnuswami. Earlier, the widow of the victim, Ananthi had filed MCOP.No.404 of 2006 before the MACT, Additional District and Sessions Court (FTC-1), Poonamallee, wherein she had arrayed her mother-in-law Vijayalakshmi as the third respondent, but not her father-in-law Ponnuswami. Before the Tribunal, Vijayalakshmi chose to remain ex-parte.

3. The parents of the victim on their part had independently laid MCOP.No.491 of 2008 before the MACT [Chief Judge, Court of Small Causes], Chennai. Vijayalakshmi would now file Transfer CMP.No.310 of 2008 for the transfer of MCOP.No.404 of 2006 for a joint trial with MCOP.No.491 of 2008. During the pendency of the aforesaid Tr.CMP.No.310 of 2008, the Tribunal had disposed of MCOP.No.404 of 2006 preferred by the widow of the victim. As earlier stated, the mother of the victim remained ex-parte in this proceedings. The Tribunal had assessed the total compensation payable at Rs.4,23,000/-, and this was not challenged by the mother of the victim. Subsequently, when the Tr.CMP.No.310 of



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2008 came up for hearing, that came to be dismissed, since by then

MCOP.No.404 of 2006 had already been disposed of.

4. It is in this backdrop, the Tribunal took up MCOP.No.491 of 2008 filed by the appellants. The Tribunal had very appropriately and wisely did not choose to interfere with the earlier award passed in MCOP.No.404 of 2006, but taking into consideration that the appellants are also dependants on the victim, it chose to award a lump-sum amount of Rs.4,00,000/- for them. The foundational basis for passing the said award by the Tribunal in MCOP.No.491 of 2008 is under challenge in this civil miscellaneous appeal.

5. It is brought to the notice of the Court that one of the claimants i.e., the mother of the victim, the second respondent herein, has since passed away. Since the heirs of the second respondent, namely the first and fourth respondents are already on record, and a memo to that effect has been filed in SR.No.13317 of 2022 dated 18.04.2022, the appellant is now dispensed from impleading the LRs of the deceased second respondent.

6. Heard both sides. This Court finds considerable merit in the submissions



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of the counsel for the appellant. It is unfortunate that the parents of the victim could not be provided with any compensation, but then atleast one of the parents, the mother of the victim, was the third respondent in MCOP.No.404 of 2006, but she did not choose to contest it. Atleast, after the dismissal of Tr.CMP.No.310 of 2008, she could have preferred an appeal against it, but that was not done. Therefore, the approach of the claimants in the present case claiming compensation is not entertainable vis-a-vis the compensation payable for loss of dependency. This precisely is the legal position and this cannot be expanded. However, so far as the present proceedings is concerned, both the parents are entitled to compensation for loss of love and affection. They both will now be entitled to Rs.40,000/- each on this head. If at all, they have a claim, they have to approach only the widow of the victim for a share, but this issue is left open.

7. The claimants/respondents 1 & 2 are accordingly awarded Rs.40,000/- each towards loss of love and affection, and the award of the Tribunal is modified to that extent. Accordingly, this appeal is partly allowed, and the award dated 17.02.2020 in MCOP.No.491 of 2008, is set aside and the award is modified to the extent of payment of compensation for loss of love and



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affection. The appellant is now directed to deposit Rs.80,000/- before the Tribunal along with accrued interest @ 7% per annum from the date of filing of the claim petition till the date of deposit of Rs.80,000/-, upon which the first petitioner/first respondent herein is permitted to withdraw the same forthwith (since this Court is informed that the second respondent is no more). Even though there have been earlier dismissal for default and restoration etc., given the fact that the interest payable for the last 15 years will only around Rs.90,000/-, this Court chooses to ignore the same. The appellant is required to comply with this order within a period of six weeks from the date of receipt of certified copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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

To:
1.The Special District Judge
MCOP Tribunal, Salem.

2.The Section Officer
VR Section
High Court, Madras.



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N.SESHASAYEE.J.,

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