



C.M.A.(MD)No.573 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 23.11.2022

Delivered On : 30.01.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.573 of 2012

R.Seethalakshmi @ Seetha

.. Appellant /claimant

Vs.

1.Jeyaram

2.The Divisional Manager,

National Insurance Company Ltd.,

Police Station Road, Sivakasi.

3.Dhanalakshmi

4.Srinath

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.115 of 2005, on the file of the Motor Accident Claims Tribunal cum Sub Judge, Sivakasi, dated 30.10.2010.

For Appellant : Mr.M.Ashokkumar

For Respondents : Mr.D.Sivaraman for R2

: Mr.D.Selvanayagam for R3

: No appearance for R1

: R4 – dismissed vide court order, dated :25.06.2018



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JUDGMENT

This Civil Miscellaneous Appeal has been filed to enhance the award amount, made in M.C.O.P.No.115 of 2005, on the file of the Motor Accident Claims Tribunal cum Sub Judge, Sivakasi, dated 30.10.2010. The appellant herein are the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.115 of 2005, is as follows:-

On 20.04.2005, at about 4.45 pm., when the deceased- Ramasubbu was riding a two wheeler bearing Registration No.TN-67-U-0446 in a careful and cautious manner, near Pillaiyar temple, Kongalapuram bus stop, keeping the extreme left side of the road, a lorry bearing Registration No.TN-67-U-0446 came from the opposite direction in a rash and negligent manner, dashed against the motorcycle. Both the rider and the pillion rider sustained injuries. They were admitted in Sivakasi Government Hospital and the deceased died in the hospital. The deceased was aged about 52 years. The petitioner is his dependant and the deceased divorced the third respondent-Dhanalakshmi by customery practice and he married the



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petitioner. The marriage was duly registered in the temple and the marriage fee of Rs.25/- was paid. The family card also disclosed the name of the petitioner and the respondents 4 and 5. The petitioner is a dependant of the deceased and she is entitled to a share of Rs.2,00,000/- from out of the total claim of Rs.6,00,000/- as compensation.

3. A Brief substance of the counter filed by the second respondent, in M.C.O.P.No.115 of 2005, is as follows:

The petitioner has to prove the manner of accident. The vehicle involved in the accident was not insured with the respondent. The petitioner has to prove the age, profession and income of the deceased. The claim is excessive.

4. A Brief substance of the counter filed by the respondents 3 to 5, in M.C.O.P.No.115 of 2005, is as follows:

It is wrong to state that the marriage between the deceased and the third respondent was dissolved. It is denied that the deceased married the petitioner on 11.02.1988. It is denied that the marriage registration fee was paid and that the petitioner was living with the deceased in Kongalapuram Village and the petitioner was having a family card. The deceased married Dhanalakshmi and that marriage was not at all dissolved. The petitioner did not marry the deceased.



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5. The petitioner filed this petition claiming compensation as the second wife of the deceased. Another petition in M.C.O.P.No.114 of 2005 was filed by the wife and son as the dependants of the same deceased. The pillion rider-Rajendran, who was injured in the same accident, has filed a claim petition in M.C.O.P.No.113 of 2005. A joint trial was conducted in all the three cases and a common judgment was pronounced by the Tribunal.

6. In the joint trial, 5 witnesses were examined and 27 documents were marked, on the side of the claimants. 3 witnesses were examined and 4 documents were marked, on the side of the respondents. 1 document was marked as Ex.X1. After considering both sides, in M.C.O.P.No.14 of 2005, the Tribunal awarded Rs.3,14,500/- as compensation and the Tribunal has dismissed M.C.O.P.No.115 of 2005.

7. Against the order, the claimant / appellant has filed this appeal on the following grounds:-

The Tribunal without considering the fact that the appellant was the dependant of the deceased, has dismissed the claim petition. Without deciding the validity of the marriage, the Tribunal wrongly dismissed the case. The Tribunal



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failed to consider that the name of the appellant was found place in the ration card.

The Tribunal failed to consider that the respondents 3 to 5 failed to produce any documents to prove that they were living together with the deceased and that the third respondent gave her consent for the appellant to get compensation for the death of said Ramasubbu. To claim compensation, the claimant has to prove only dependency and that the validity of the marriage is immaterial. The name of the respondents 4 and 5 were available in the ration card of the appellant.

8. On the side of the appellant, it is stated that the deceased was married to the appellant, receipt for payment of marriage fee in the temple was filed. Copy of the ration card was filed. The first wife, who was divorced by the deceased following the customary practice, has not shown the appellant as a party and that she received the compensation. In the ration card, the name of the appellant and the respondents 3 and 4 found place. The appellant is not claiming compensation as the Legal Representative, but, the appellant is claiming compensation as the dependent.

9. On the side of the third respondent, it is stated that the appellant is having no *locus standi* to file this petition. The claim petition filed by the third respondent was allowed. The claim petition filed by the appellant was dismissed. The appellant is not the legally wedded wife of the deceased. The appellant is



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claiming that she is the second wife of the deceased and that she is claiming some right on the basis of Ex.P7- consent letter. Consent letter was not given by the first wife and that the consent letter was obtained by force.

10. On the side of the second respondent, it is stated that the appellant is claiming compensation as the second wife of the deceased. Already first wife of the deceased filed a claim petition. In the claim petition filed by the first wife, the Tribunal awarded Rs.3,14,500/- as compensation. The appellant has filed the appeal to claim a share in the compensation.

11. On the side of the appellant, it is stated that the third respondent did not deny the signature in Ex.P7-consent letter and hence, the appellant is also entitled to claim compensation.

12. Even the second wife can claim compensation, if she was a dependant of the deceased. A judgment of the High Court of Karnataka reported in ***AIR-2015 (NOC)-687(KAR) (Lalitha V. R.Sunilkumar and others)***, wherein, it is stated as follows:-

“Second wife, who lived with deceased for more than 20-25 years till his death and was dependant on him would be entitled for amount awards loss of consortium”



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13. There is no appeal against the common judgment, in M.C.O.P.Nos.113, 114 and 115 of 2005, by the Insurance Company. There is no dispute regarding the quantum awarded by the Tribunal in M.C.O.P.No.114 of 2005. The payment of compensation in the motor accidents claims is to be based on the dependency. Though a person is not a legal heir, if a person was a dependant on the income of the deceased, that person is entitled to claim compensation under the Motor Vehicles Act.

14. Admittedly the marriage between the deceased and the first claimant in M.C.O.P.No.114 of 2005 was not legally dissolved and hence, the claimants in M.C.O.P.No.114 of 2005 is not a legal heir. It is seen that the signature in the consent letter-Ex.P7 was not denied by the first claimant in M.C.O.P.No.114 of 2005. From Ex.P6-copy of ration card, it is clear that the deceased was living with the appellant. Hence, it is decided that the appellant was a dependant of the deceased.

15. As the legally wedded wife, the first claimant in M.C.O.P.No.114 of 2005 is entitled to a share in the compensation. The Tribunal has decided that as the legally wedded wife, the first claimant and as the son, the second claimant in M.C.O.P.No.114 of 2005 were entitled for compensation.

16. In the above circumstances, the compensation is apportioned as follows:-



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The first claimant in M.C.O.P.No.114 of 2005 is entitled to Rs.1,14,500/- with proportionate interest and costs and the second claimant in M.C.O.P.No.114 of 2005 is entitled to Rs.1,00,000/- with proportionate interest and cost and the appellant is entitled to Rs.1,00,000/- with proportionate interest and costs.

17. The Civil Miscellaneous Appeal is allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal in M.C.O.P.No. 114 of 2015 is confirmed.

(ii) The second respondent herein - Insurance Company, is directed to deposit the entire compensation of Rs. 3,14,500/- (if not already deposited), in M.C.O.P.No.114 of 2005, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the appellant / claimant in M.C.O.P.No. 115 of 2005, is permitted to withdraw her share amount of Rs.1,00,000/- with interest and costs, deposited in M.C.O.P.No.114 of 2005, on filing of proper petition before the Tribunal. The claimant is not entitled for interest for the default period, if there is any.

30.01.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No



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R. THARANI, J.

Ls

To

- 1.The Sub Judge,
Motor Accident Claims Tribunal,
Sivakasi.

- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.573 of 2012

30.01.2023