



C.M.A.No.3137 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 06.03.2024	Pronounced on 28.03.2024
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

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1.Prema
W/o.Late Manibalan

2.Minor Harini
D/o.Late Manibalan

(Minor Appellant 2 is represented by her
next friend Mother/1st Appellant Prema)

both are residing at
No.4/41, North Street
Akkara Pettai Village
Nagapattinam District Munsifi

... Appellants

Vs.

1.Minor Rathisha
D/o.Late Manibalan

2.Minor Pooja
D/o.Late Manibalan

(Minor respondents 1 & 2 are represented by their
next friend Mother/6th Respondent Jothy)

both are residing at



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Pudupettai
Manikapangu Post
Tharangabadi Post
Nagapattinam District

3.Savarinathan
S/o.Lourdu
Matha Kovil Street
Kottucherry Village and Commune
Karaikal District Munsifi

4.Elangovan
S/o.Selvaraj
Tractor Owner
No.12, Thoppu Theru
Pettai Village
Thirunallar Commune
Karaikal District Munsifi

5.TATA AIG General Insurance Co. Ltd., Puducherry
Represented by its Branch Manager
Puducherry Town
District Munsifi

6.Jothy
W/o.Late Manibalan
Pudupettai
Manikapangu Post
Tharangabadi Post
Nagapattinam District

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 30.06.2020 made in MACTOP.No.165 of 2014 on the file of the Motor Accident Claims Tribunal (District Court) Karaikkal.



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For Appellants

: Mr.K.S.Kathik Raja (for A1)

Mr.K.V.Muthu Visakan (for A2)

Legal aid counsel

For Respondents

: Mr.J.Michael Visuvasam (for R5)

R1 to R4 & R6 - Exparte

J U D G M E N T

The Appeal has been filed against the award dated 30.06.2020 made in MACTOP.No.165 of 2014 on the file of the Motor Accident Claims Tribunal (District Court) Karaikkal.

2.The 1st and 4th claim Petitioners are the Appellants herein and they filed this Appeal, seeking modification of the award passed in MCOP.No.165 of 2014 dated 30.06.2020. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The 1st claim Petitioner is the second wife of the deceased Manibalan, through him the 4th claim Petitioner/Harini was born. The 4th Respondent is the legally wedded wife of the deceased, she is living with her two minor children viz., Rathisha and Pooja. The 4th Respondent, who is the wife of the deceased



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filed counter statement alleging that she is a legally wedded wife of the deceased and the 1st claim Petitioner is not the legally wedded wife and there was no decree of divorce dissolving the marriage between the deceased and the 4th Respondent.

5.During the trial, on the side of the claim Petitioners, PW1 & PW2 were examined & Ex.P1 to Ex.P.10 were marked and on the side of the Respondents, RW1 & RW2 were examined and Ex.R1 to Ex.R9 were marked.

6.Heard the learned counsel appearing on behalf of the 1st claim Petitioner, learned counsel appearing on behalf of the 4th claim Petitioner and the learned counsel appearing on behalf of the Insurance Company.

7.The trial Court on considering the oral and documentary evidences, come to the conclusion that the accident has taken place due to the rash and negligent driving of the 1st Respondent, who drive the vehicle, which is owned by the 2nd Respondent and insured with the 3rd Respondent. As per Ex.R1/Insurance policy, on the date of the accident, the vehicle was duly insured and the policy is active and hence the Tribunal held that Respondents 1



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and 3 are jointly and severally liable to pay compensation and awarded a sum of Rs.16,32,966/-. Further, the Tribunal held that the claim Petitioners 2 to 4 and the 4th Respondent (legally wedded wife of the deceased) are entitled to receive compensation and the 1st claim Petitioner is not entitled to any compensation. Challenging the said order of rejection of entitlement of compensation for the 1st claim Petitioner, she preferred this Appeal.

8.After hearing the rival submissions and perusing the orders passed by the Tribunal, I find that the Tribunal has fixed the notional income at Rs.10,078/-, adopted $\frac{1}{4}$ th deduction towards personal expenses of the deceased and applied '16' as multiplier, as per the judgment of the Hon'ble Supreme Court in ***Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC)*** and awarded a sum of Rs.16,32,966/- along with other conventional heads and fixed contributory negligence on the part of the deceased at 15%. The said award of the Tribunal is well founded and well merited, which does not required any modification by this Court.

9.On the point of the entitlement of compensation to the 1st claim



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Petitioner, the learned counsel for the 1st claim Petitioner/1st Appellant would contend that though she is a second wife, she lived with the deceased and gave birth to 4th claim Petitioner viz., Harini and hence she should be treated as dependent and she is entitled for apportionment in the award amount.

10.Learned counsel for the 4th claim Petitioner/2nd Appellant (legal aid counsel) would contend that the 4th claim Petitioner was born to the first claim Petitioner and the deceased and made submission in support of the apportionment made by the Tribunal in respect of the 2nd Appellant.

11.Admittedly the marriage solemnised between the deceased/Manibalan and the 4th Respondent/Jothi was in subsistence on the date of the accident and minor claim Petitioners 2 & 3 are born to them, while the 4th claim Petitioner/Harini born through the 1st claim Petitioner/Prema. The 4th claim Petitioner is entitled for the share in respect of the compensation awarded for the death of the deceased/Manibalan under Section 13(3) of the Hindu Succession Act. Coming to the entitlement of the 1st claim Petitioner/Prema, admittedly, she is not a legally wedded wife of the deceased, in view of the marital status of 4th Respondent/Jothy with the deceased, which was subsisting



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on the date of the accident. The 1st claim Petitioner claimed that she lived together with the deceased, the person who is living together cannot be termed as dependent of the deceased, as per Section 2 (11) of CPC. Hence the order passed by the Tribunal is well considered and is squarely falls under the definition and therefore, the well merited order of the Tribunal does not warrant any interference of this Court.

12.The point that arises for consideration in the Appeal is whether the 1st claim Petitioner being the second wife of the deceased is entitled for any compensation or not was answered in the case of **Cholan Roadways Corporation Ltd., Vs. Pavunraj and Ors**, reported in **2000 ACJ 616**, wherein it is held as follows:

*“13. To maintain an application under **Section 166** of the Motor Vehicles Act, the condition precedent is that a person so maintaining should be a legal representative. The object of the Act is to provide opportunity and remedy to all the legal representatives to approach the court for award of compensation if they are otherwise entitled to receive such compensation by the Tribunal. The provisions of the Act do not permit exclusion of a person who is living separately though he*



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is a legal representative. To decide whether a particular legal representative is entitled to compensation or not is one thing; the question whether the legal representative could maintain the petition under [Section 166](#) of the Act is another thing.

14. [Section 166\(1\)\(c\)](#) of the Act provides that an application for compensation arising out of an accident in the case of death may be filed by all or any of the legal representatives of the deceased. [The Act](#) does not define the expression 'legal representative' in [Section 166](#) of the Act or in any of the defining sub-sections of [Section 2](#) of the Act. Therefore, the definition of 'legal representative' as provided in [Section 2\(11\)](#) of the Code of Civil Procedure has to be referred to which reads thus:

'Legal representative' means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

Thus a person, who in law, represents the estate of deceased or a person who intermeddles with the estate of the deceased would be the legal representative of the deceased within the meaning of the Act.”



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Hence, this Court has no hesitation to held that being the second wife, when the first wife of the deceased is alive, the 1st claim Petitioner is not entitled for any amount as compensation. However, the 4th claim Petitioner/2nd Appellant, who is the daughter is entitled to get share in the compensation amount.

13. Accordingly, the award dated 30.06.2020 made in MACTOP.No.165 of 2014 on the file of the Motor Accident Claims Tribunal (District Court) Karaikkal, is hereby confirmed and this Civil Miscellaneous Appeal is dismissed. No costs.

28.03.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To
The Presiding Officer
District Court
Motor Accident Claims Tribunal, Karaikkal.



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

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Dated: 28.03.2024