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CMA(MD)No.16 of 2024



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2024

CORAM :

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

CMA(MD)No.16 of 2024

Eswari

... Appellant

vs.

1. Manickam

2. The Divisional Manager,
Cholamandalam MS General Insurance Co. Ltd.,
Door No.17, 1st Floor,
Thiruvananthapuram Road,
Murugankurichi,
Palayamkottai,
Tirunelveli District.

3. Saravanan

... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988,
against the judgment and decree made in MCOP.No.72 of 2021 on the
file of the Motor Accident Claims Tribunal, (Principal Subordinate
Judge), Tenkasi, dated 01.09.2022.

For Appellant	: Mr.C.Rathnavel Pandian
For R1 & R3	: No appearance
For R2	: Ms.K.R.Shivasankari



J U D G M E N T

G.JAYACHANDRAN, J.

and

C.KUMARAPPAN, J.

On 12.07.2019, Ramalakshmi wife of Saravanan sustained grievous injury in a motor road accident and FIR was registered by Alangulam Police Station in Crime No.304 of 2019 after five days. She died on 16.07.2019. Her husband Saravanan preferred MCOP.No.2041 of 2019 on the file of III Additional District Court, Tirunelveli, seeking compensation from the insurance company, 2nd respondent herein. The claim petition was settled through the Lok Adalat for a sum of Rs.12 Lakhs on 10.04.2021 and award was passed on 26.04.2021.

2. Pending this claim petition before the III Additional District Court, Tirunelveli, the mother of the deceased Ramalakshmi had preferred independent claim petition before the Motor Accident Claims Tribunal (Principal Subordinate Judge), Tenkasi and same was taken on file as MCOP.No.72 of 2021 arraying his son in law Mr.Saravanan who was the sole claimant in the other MCOP.No.2041 of 2019 as party. She filed her petition on the premise that being the mother of the deceased Ramalakshmi, she was the dependent and was residing along with her deceased daughter and was assisting her in the Canteen run by her



daughter and her husband. In her claim petition, the insurance company has filed counter stating that already the husband of the deceased Ramalakshmi preferred a claim petition and same was settled through the Lok Adalat and therefore, there cannot be a double claim for the single accident.

3. This plea was accepted by the Tribunal and the claim petition was dismissed. Hence, the mother of the deceased Ramalakshmi has preferred the present appeal stating that the claim petition filed by the husband without impleading her *per se* ought to have been opposed by the insurance company more so when the insurance company was aware of the claim petition filed by the appellant was pending at the relevant point of time. But unfortunately, ignoring the claim petition filed by the appellant, the insurance company has voluntarily settled the claim of the husband of the deceased qua the sole claimant in MCOP.No.2041 of 2019 who has filed his claim petition without impleading the mother of the deceased. The learned counsel for the appellant would submit that the settlement of claim petition filed by the husband of the deceased will not be an impediment for the appellant qua the mother of the deceased to claim compensation as a dependent of her married daughter.



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4. Learned counsel appearing for the 2nd respondent insurance company relying upon the judgment of the Madras High Court in **State of Tamil Nadu vs. Karuppa Naicker and others** reported in **1992 ACJ 901**, rendered by **Hon'ble Mr.Justice M.SRINIVASAN**, (as he then was) submitted that the insurance company cannot be made liable twice for the same accident, and she would submit that having settled the claim and discharged their liability arising out of the motor accident covered under the insurance policy, the insurance company cannot be once again mulcted with liability.

5. This Court after having given its anxious consideration to the above judgment finds that the facts found in the above reported judgment relied by the insurance company are substantially different from the facts of the case under consideration. In the reported judgment, the claimants are minors and while the natural guardian and defacto guardian loggerhead to have control over the award amount, the High Court held as stated supra.

6. Learned counsel appearing for the respondent insurance company also circulated another judgment of the Gujarat High Court rendered in **New India Assurance Co. Ltd., vs. Banuben Sikandarbai**



Shaikh and others reported in **2006 ACJ 1270**, wherein a similar situation came up for consideration before the Single Judge, and the Court held that the insurance company cannot pay compensation twice for the death of the same person. Therefore, the learned counsel appearing for the respondents submitted that the settlement made in the claim petition filed by the husband of the deceased has to be set aside and both the claim petitions filed by husband and the mother of the deceased/appellant herein have to be jointly tried afresh.

7. The relevant facts and the decision of the Court in **Banuben Sikandarbai Shaikh's case [cited supra]** is extracted below for better understanding:

"5. Upon hearing the learned advocates for the parties, it appears that on factual aspect there is no dispute that the deceased Sikandar Shaikh has expired in the accident. There is also no dispute that for the death of one person two claim petitions were preferred separately by respondent Nos 1,2 & 3 before the tribunal at Gandhinagar and by respondent No.4 before the tribunal at Ahmedabad. There is also no dispute on the point that the matter was compromised before Lok Adalat and the amount is deposited. However, it appears that the respondent Nos 1,2 & 3 claimed the amount of compensation as wife, son and daughter of the deceased respectively whereas the respondent No.4 also claimed the compensation as wife of the deceased.

6. Since the filing of earlier claim petition being MACP No. 144/98 was not disclosed in the subsequent claim petition being MACP



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No.860/99 the tribunal had no occasion to consider the said aspects and as the matter was settled in Lok Adalat the award has been passed on the settlement arrived at in MACP No.860/99. It appears that as the matter was settled in Lok Adalat the maximum amount of compensation for the death of the deceased can at the most be said as Rs.1,70,000/-. However, as there is dispute amongst the legal representatives of the deceased, it will be required for the tribunal to consider the claim of respective parties and then to finalise the issue, but, in any case, on account of death of one person, i.e. Sikandar Shaikh payment of compensation twice is not permissible. Therefore the award passed by the tribunal in MACP No.860/99 based on the settlement arrived at Lok Adalat deserves to be quashed. However, as in the proceedings of MACP No.144/98 the respondent No.4 was not party to the proceedings the respondent No.4 herein will be allowed to be impleaded as party to the proceedings of MACP No.144/98 and thereafter respective parties may establish their rights as legal representatives of the deceased Sikandar Shaikh. Until the rights are established in respect of the amount of compensation awarded by the tribunal in MACP No.144/98 it is just and proper to stay the further disbursement of the amount including interest on the FD receipt which has been invested in the nationalised bank as per the award passed by the tribunal in MACP No.144/98.

7. In view of the aforesaid the award passed by the tribunal in MACP No.144/98, dated 27.9.90 is stand quashed on the aspects of distribution and disbursement of amount of compensation amongst the claimants. The matter shall stand restored to the tribunal. The tribunal shall allow the respondent No.4 to be impleaded as applicant No.4/respondent and thereafter shall examine the rights of the respective claimant including respondent No.4 herein for their entitlement to get the compensation on account of death of deceased Sikandar Shaikh and shall pass final award preferably within a period of four months from the date of receipt of writ of this court."



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8. In the light of the facts and the pronouncement of this Court and the Gujarat High Court in the judgments cited supra, this Court is of the view that the Lok Adalat settlement by the insurance company in the claim petition filed by the husband of the deceased without impleading the mother of the deceased despite the insurance company knowing the fact that the mother of the deceased has already preferred a claim petition causes concern to the court, especially the maverick and callous conduct of the insurance company. Eventually, in view of the Lok Adalat award, the claim petition filed by the appellant was dismissed by the Tribunal.

9. The reason assigned by the Tribunal was that there cannot be two separate claim on the death of the single person. It is pertinent to mention here that in order to maintain the claim application under Motor Vehicles Act, what is essential is to prove of dependency. Here the appellant herein, being the mother of the deceased, has pleaded that she is also the dependent of her deceased daughter. But her claim application could not be decided by the Tribunal, in view of the settlement of claim in lok adalat by way of award passed in M.C.O.P.No.2041 of 2019, which was filed by the appellant's son-in-law.



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the appellant aware about the pendency of the another claim application in M.C.O.P.No.72 of 2021. Therefore, for better adjudication, this Court deems it appropriate to set aside the lok adalat award passed in M.C.O.P.No.2041 of 2019, so as to have a fresh and comprehensive assessment over the dependency of the appellant and the third respondent herein, and to have joint trial along with the application filed by the third respondent in M.C.O.P.No.72 of 2021.

12. Our view is also in line with the judgment of the ***Banuben Sikandarbai case*** (*cited supra*). While passing the fresh and comprehensive award, in the joint trial, according to it's respective merits, the amount already awarded to the second respondent herein is to be taken note off.

13. Hence, the judgment and decree passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Tenkasi, in MCOP.No.72 of 2021 dated 01.09.2022 is hereby set aside. The compromise award passed in the Lok Adalat held on 10.04.2021 and the award dated 26.04.2021 in MCOP.No.2041 of 2019 on the file of III Additional District Court, Tirunelveli, is also set aside. The claim petition in MCOP.No.2041 of 2019 on the file of III Additional District



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Court, Tirunelveli, be transferred to the Motor Accident Claims Tribunal (Principal Subordinate Judge), Tenkasi, to be tried along with MCOP.No. 72 of 2021 filed by the mother of the deceased. The Tribunal after considering the merits of the case, shall pass common award accordingly and shall take note of the fact that the 3rd respondent herein/husband of the deceased has already been paid compensation of Rs.12 Lakhs in MCOP.No.2041 of 2019 and such settlement amount may be adjusted in the final award.

14. With the above direction, the Civil Miscellaneous Appeal is allowed. No costs.

(G.J., J.) (C.K., J.)
15.02.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Tenkasi.

2. III Additional District Judge,
Tirunelveli.



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and
C.KUMARAPPAN, J.

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JUDGMENT MADE IN
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