



1

C.M.A.(MD)NO.418 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R.POORNIMA

C.M.A(MD)No.418 of 2022 AND

C.M.P.(MD)No.3695 of 2022

Palak Sangoi

... Appellant / Petitioner

Vs.

1. Vasanti Sangoi

2. M.Sathish Kumar

3. M/s.Cholamandalam MS General Insurance Company,
Dare House, II Floor, NSC Bose Road,
Chennai – 600 001.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against apportionment and division of the award amount made in M.C.O.P.No.330 of 2012 dated 07.03.2016 on the file of the Motor Accident Claims Tribunal, Madurai(IV Additional District Judge, Madurai).

For Appellant : Mr.S.Vijayakumar,
Senior counsel,
for Mr.M.Kumar.

For R-1 : Mr.M.P.Dhamodaran

* * *



WEB COPY

J U D G M E N T

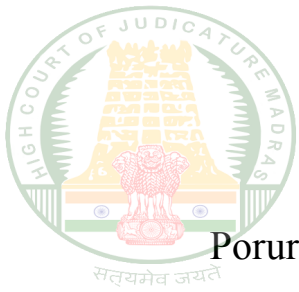
(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

This appeal is directed against the award dated 07.03.2016 made in M.C.O.P.No.330 of 2012 on the file of the Motor Accidents Claims Tribunal, Madurai with regard to apportionment of the award amount.

2. Heard the learned counsel appearing for the appellant.

3. Though the first respondent is the contesting respondent and she has been served, she has not chosen to enter appearance either in person or through counsel.

4. On 03.06.2011 at about 8.40 hours Kapil Sangoi, husband of the appellant and son of the first respondent, was riding his two wheeler on Kundrathur-Poonamalle road. A tipper lorry insured by the third respondent came from behind and hit him causing grievous injuries. He was taken to Ramachandra Medical College Hospital,



Porur. He succumbed to his injuries. In this regard, crime No.1044 of 2011 was registered on the file of the Traffic Investigation Wing police station, Poonamalle. The appellant filed M.C.O.P.No.330 of 2012 before the Motor Accidents Claims Tribunal, Madurai claiming a sum of Rs.1 crore as compensation. The appellant examined herself as P.W.1. Two other witnesses were examined on her side. Ex.P.1 to Ex.P.19 were marked. On the side of the insurance company, no witness was examined and no evidence was adduced. After considering the evidence on record, the Tribunal passed the award dated 07.03.2016 in the following terms:-

“2. that the award is passed in favour of the petitioners as against the 3rd respondent. The 3rd respondent is directed to pay the compensation of Rs.86,50,000/- (Rupees Eighty Six Lakhs, and Fifty Thousand only) payable with interest at 7.5% p.a., from the date of filing the petition till the date of realization, within two months from the date of the award.

3. that after the deposit of the compensation amount, petitioner shall be entitled to Rs.43,25,000/-. The 1st respondent, mother of deceased Vasanthi Sangoi shall be entitled to Rs.43,25,000/- along with



WEB COPY



her husband. This Court permits the petitioner and the first respondent to withdraw 20% award amount with proportionate interest and costs. The balance 80% amount shall be deposited in any nationalized bank for three years and the petitioner and the first respondent and her husband shall withdraw the accrued interest once in three months.”

5. Contending that the Tribunal erred in apportioning the award amount equally, the present civil miscellaneous appeal has been filed.

6. The appellant appeared before us in person. She filed an affidavit stating that the first respondent was never a dependant.

Paragraph Nos.7 to 11 of the said affidavit are as follows:-

“7. When facts stood so, the claim petition was filed before the Tribunal and by virtue of necessity, the deceased mother was impleaded as Vasanthi Sangoi, the first respondent herein as a party / class I legal heir. It is also relevant to point out that none of my in-law depended upon us and that they have their own sources of income derived from the family of a private



WEB COPY



limited company.

8. I submit that my father-in-law, is the Managing Director and also one of three directors-alongside his brother-in-law and nephew-of Intouch Leather House Private Ltd. which was incorporated on 28.12.2004. It is a non-Government company and that the authorized capital itself is shown Rs.100 Lakhs as seen from the records maintained in the Register of Companies. All these facts are culled out from the Registrar of Companies with whom the company was registered under Companies Act 1956.

9. I submit that, as a member of the family in the past, I am aware of a legal dispute between my father-in-law and his elder brother regarding inheritance matters. As I understood, my father-in-law as a legal heir, stood to inherit one-third of the Remuki Group assets in Madurai, where he has previously listed himself as a working partner, as stated on his LinkedIn profile.

10. I submit that I reliably learnt that elder sister-in-law was educated by my in-laws by placing her in an international Master of Fine Arts 2-year program at the prestigious California Institute of the Arts from 2016 to 2018. A reasonable estimate of the course costs alone is around Rs.83,00,000. While some



WEB COPY



families in India invest in educational paths such as engineering, medicine, law, or software programming-fields that offer promising career prospects and lucrative salaries-funding an arts course from a prestigious U.S. Institution is a significant financial undertaking that would typically be feasible only for affluent individuals. For my in-laws spending this huge amount for a 2-year course may seem insignificant, however, as a widow at 42, this sum would be a life-line for me.

11. I submit that the learned Tribunal examined me as P.W.1 and verified the facts that my husband was an independent person and that he has nothing done with the business of his father and that he was not holding any share in the said company. In other words, my husband and myself were peacefully living independently without any support or help from the family business.”

7. It is relevant to note here that the first respondent remained ex-parte before the Tribunal. She has also not chosen to contest this CMA. To satisfy our conscience, we directed the learned counsel for the appellant to take a fresh notice to the first respondent. Even though the notice was served, the first respondent has not chosen to



enter appearance.

WEB COPY

8. The appellant informed that the occurrence had taken place on 03.06.2011. The appellant is now aged 36 years. The appellant got married to the deceased Kapil Sangoi on 10.02.2008. She had lived with him for hardly three years and three months. At the time of death, the appellant's husband was aged 27 years. Even though 14 years have passed, the appellant has not re-married. She continues to remain single. She has stated that her husband's salary was the only source of income for running the family.

9. On the other hand, the first respondent was never dependant on the appellant's husband (her son).

10. It is true that the first respondent, mother of the deceased was one of his class-I legal heirs. But it is a well settled practice that the Tribunal need not divide the award amount equally among the legal heirs.



WEB COPY

11. The only parameter of consideration for apportionment would be the extent of dependency. In this case, we are more than satisfied that while the appellant was depending on her husband, the first respondent was never dependant on her son. The Hon'ble Division Bench of Madras High Court vide order dated **01.06.2021** in **C.M.A.No.3264 of 2019 (Saroja V. Parvathy and four others)** had held as follows:-

“43. ... dependency is the criteria to award compensation. Hence, mere status of legal representative alone is not sufficient to make a claim. Thus, the basis for entitlement for compensation is dependency. If a legal representative is not a dependant of the deceased, he is not entitled for compensation for loss of dependency. Whether the claimants are dependants or not, has to be examined only based on the evidence adduced in a particular case. ...”

12. We are inclined to follow the aforesaid approach adopted by the Hon'ble Division Bench. In the case on hand, the appellant

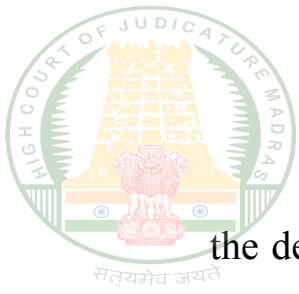


alone came forward to be the claimant. The first respondent did not even bother to join her. She did not even adduce any evidence before the Court below nor did she choose to contest.

13. The Hon'ble Division Bench in the aforesaid case had held that where a party fails to avail the right of cross examination of witness despite there being sufficient opportunity, and testimony of such witness remains unrebutted and unimpeached, then, in such circumstances, such testimony has to be given due credence. In this case, the stand of the petitioner has not at all been rebutted or impeached by the first respondent.

14. In this view of the matter, we hold that the Tribunal gravely erred in treating the appellant and the first respondent herein on the same footing and pedestal.

15. The Tribunal failed to examine the question of the extent of dependency of the first respondent. Even though we hold that the first respondent was not at all dependant, considering the fact that



the deceased happens to be her son, we are of the view that interest of justice will be met by holding that the appellant will be entitled to 90% of the award amount, whereas the first respondent will be entitled to 10% of the award amount. The impugned judgment and decree is accordingly modified. This civil miscellaneous appeal is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (R.POORNIMA, J.)
27.01.2025

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

PMU

To:

1. The IV Additional District Judge/
Motor Accident Claims Tribunal,
Madurai.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



11

C.M.A.(MD)NO.418 OF 2022

G.R.SWAMINATHAN, J.

AND

R.POORNIMA, J.

PMU

C.M.A.(MD)No.418 of 2022

27.01.2025