

HONOURABLE SMT.JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.No.2946 OF 2009

JUDGMENT:

Aggrieved by the Common Judgment and Decree dated 19.10.2006 (hereinafter will be referred as 'impugned judgment') passed by the learned Chairman, Motor Accident Claims Tribunal – cum - I Additional District Judge, Nizamabad (hereinafter will be referred as 'Tribunal') in O.P.No.677 of 2000 and O.P.No.45 of 2002, the petitioner/claimant in O.P.No.677 of 2000 i.e., mother of the deceased filed the present Appeal to modify the common judgment and decree dated 19.10.2006 and thereby prayed to dismiss the O.P.No.45 of 2002.

2. For the sake of convenience, the parties hereinafter are referred as they were arrayed before the Tribunal.

3. The brief facts of the case as can be seen from the record are that the petitioner filed claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.15,00,000/- from the respondent Nos.2 and 3 for the death of her son by name 'Nagaraju' in the road traffic accident that occurred on 07.03.2000. The petitioner arraigned the wife of the deceased as respondent No.1, as the wife of the deceased got remarried. The reason assigned by the petitioner for the death

of her son is that on 07.03.2000 while the deceased was opening the lock of his shop M/s. Venkateswara Agencies, Husnabad Street, Armour, a van bearing No. AP 25 T 4816 (hereinafter will be referred as 'crime vehicle') driven by its driver in rash and negligent manner dashed against the deceased. As a result, the deceased sustained crush injuries to head and died on the spot. It is submitted by the petitioner that since the accident occurred due to the rash and negligent driving of the crime vehicle, the respondent Nos.2 and 3 being the owner and insurer of the crime vehicle are jointly and severally liable to pay the compensation.

4. It is to be observed that even the wife of the deceased i.e., respondent No.1 in the instant case also filed another O.P. No.45 of 2002 seeking compensation of Rs.16,00,000/- for the death of her husband i.e., the deceased by showing mother of the deceased as respondent No.3 in the said OP.

5. Before the learned Tribunal, the respondent No.2/owner of the crime vehicle remained *exparte* and whereas the respondent No.3/insurer of the crime vehicle filed counter denying the petition averments including the manner of the accident, age and earnings of the deceased. It was further

contended that the driver of the crime vehicle was not having valid driving license at the time of accident and that claim of the petitioner is excessive and exorbitant and thus, prayed to dismiss the petition.

6. Before the learned Tribunal, on behalf of the petitioner in O.P.No.677 of 2000/mother of the deceased, PWs 1 and 2, CWs 1 to 3 were examined apart from exhibiting Exs.A1 to A10. On behalf of the petitioner in O.P.No.45 of 2002/wife of the deceased, PW1 was examined apart from exhibiting Exs.A1 to A10. On behalf of respondents/insurance Company, no oral or documentary evidence was adduced in either of the cases. Based on the oral and documentary evidence, the learned Tribunal passed common judgment, wherein the mother of the deceased was awarded Rs.4,20,000/- and Rs.2,00,000/- was awarded in favour of wife of the deceased. Aggrieved by the compensation awarded by the learned Tribunal in favour of the wife of the deceased, the mother of the deceased i.e., the appellant/petitioner preferred the present Appeal to modify the common judgment and thereby prayed to dismiss O.P.No.45 of 2002.

7. Heard Sri K. Mahender Reddy, learned counsel for the appellant/petitioner, Sri V. Krishna Rao, learned Standing Counsel for the respondent No.3/Insurance Company and perused the record including the grounds of Appeal.

8. It is pertinent to note that the respondent Nos.1 to 3 have not preferred any Appeal challenging the impugned judgment. There is also no dispute with regard to the manner of the accident, as the learned Tribunal by relying on the oral evidence of PWs 1 and 2 coupled with the documentary evidence under Exs.A1 (FIR), A2 (charge sheet), A3 (inquest panchanama), A4 (MVI Report) and A5 (PME report) arrived to a conclusion that the accident occurred due to rash and negligent driving of the crime vehicle. There is no dispute even with regard to subsistence of Ex.A9 at the time of accident.

9. The only contention of the learned counsel for the appellant/mother of the deceased is that the wife of the deceased i.e., respondent No.1 in O.P.No.677 of 2000 got married within ten months from the date of death of her husband and also begotten a child, as such, she is not entitled for compensation of Rs.2,00,000/- except loss of consortium and loss of income.

10. In **Iffco Tokio General Insurance Company v. Bhagyashri Gaikwad**¹ the High Court of Bombay observed that one cannot expect that for getting compensation of deceased husband, the widow has to remain widow for life time or till getting compensation. It was further observed that after death of husband remarriage cannot be a taboo to get compensation. In **Bridget Irene and another v. Dincy Devassy and another**² the Honourable Supreme Court has affirmed the decision of the High Court of Delhi that a widow's right to claim compensation under Motor Vehicle Act for the death of her husband in a motor vehicle accident will not abate on her re-marriage.

11. It is to be seen that the primary consideration in motor vehicle accident compensation claims is whether the claimant was a dependent of the deceased at the time of death. If the wife was dependent on her deceased husband at the time of his death, she is generally entitled to compensation. Section 166 of Motor Vehicles Act states about who can file Application for Compensation, which is extracted hereunder:

“1) An application for compensation arising out of an accident of the nature specified in subsection (1) of section 165 may be made - (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted

¹ 2023 LiveLaw (Bom) 176

² Special Leave to Appeal (C) Nos.9844/2020, dated 06.04.2021

from the accident, by all or any of the legal representatives of the deceased; or -----”

12. A perusal of the above provision does not say that remarriage after the husband's death does not automatically disqualify her from receiving compensation. However, courts may consider remarriage as a factor when determining the amount of compensation, particularly under the loss of dependency head. If remarriage improves the financial condition of the claimant, the Tribunal may reduce the compensation accordingly. If the widow remarries soon after the death and is supported by her new husband, her claim for loss of dependency may be weakened, but she can still claim compensation for other aspects such as loss of consortium and funeral expenses. Expecting a widow to remain unmarried to claim compensation is unreasonable and that remarriage should not be a barrier to receiving due compensation.

13. In **Reliance General Insurance Company Limited v. Rajni and others**³ the High Court of Panjab and Haryana observed as under:

“In Gianis W/o. Late Anil Abraham vs. Lazar Manjila S/o. Joy Manjila, 2020(3) ILR (Kerala) 457, while considering the question of entitlement of the widow of the deceased, in pursuance of her re-marriage, it was observed, as herein given:-

³ FAO-2917-2014 (O&M), Decided on 17.11.2023

"22. It is to be noted that the 1st appellant would not have thought of a remarriage, but for the untimely death of her husband. It was not a remarriage on account of divorce. The Court has to consider the psychological hurdles that the widow will face on account of remarriage. The society is changing. The age old concept of a remarried widow cutting off all relations with the family of her ex-husband, is becoming a story of the past. Fact remains that the 1st respondent was dependent on the deceased and would have remained so, but for the demise of her husband consequent to the accident. The death has indeed resulted in loss of dependency. After the death of husband, a widow may go for employment and become self-dependent or may opt for remarriage. Either way, the loss of dependency consequent to the death of the husband does not cease merely because she has remarried or became self-reliant. The word dependency and legal representative, therefore, should receive a pragmatic interpretation. While computing compensation for dependency of a widow on the death of her husband under Section 166 of the Motor Vehicles Act, 1988, her remarriage shall not be a decisive factor."

14. Section 166 of the Motor Vehicles Act, 1988 makes a widow the legal representative of her deceased husband immediately after his death in a vehicular accident. There is no bar in the said Act against a widow from claiming compensation on account of her remarriage. The widow's right to compensation is a vested right that cannot be denied just because she remarries. The widow should not be punished by depriving her of the compensation for the death of her husband. In **the State of Tripura and another v. Smt. Bela Dey (Das) and another**⁴, the High Court of Gauhati held that a widow, who remarries during pendency of a claim petition, is entitled to compensation. The relevant portion of the said decision is extracted hereunder:

⁴ AIR 2010 (NOC) 156 (Gau)

“Neither in section 165 nor in section 166, there is any restriction/bar prohibiting or disqualifying a widow, who remarries during the pendency of a claim petition, from getting compensation for the death of her husband. In view of the provisions laid down in section 166, as the widow of the deceased becomes the legal representative of the deceased, immediately on the death of her husband in a vehicular accident, her right to seek compensation under the M.V Act accrues in her favour. There is no principle of limited heir and there is nothing in the Motor Vehicles Act that in order to get compensation the widow is required to remain unmarried. As the right to claim compensation accrues immediately on the death of the husband, in the absence of any contrary provision, she cannot be divested from her statutory right to get such compensation as provided by the statute only on the ground of subsequent remarriage, to which she is lawfully entitled. There can be no dispute in understanding that after the death of a husband, in our society, the life of the widow cripples abnormally and she is subjected to all kinds of indignities, compelling her to take shelter in her parents house and if her parents are not alive and even if they are alive, sometimes due to their poor economic condition they can hardly look after such widow. It will not be appropriate to expect a widow, more particularly, a young lady, who loses her husband at the early part of her life to continue to live the rest of her life without the company of a male member. That apart, in the absence of a sufficient financial support and social security, such young widow may get exposed to any kind of exploitation. The only way to save herself from such indignity, miseries, and hardship etc., is to take the company of a male by entering into a second marriage and thereby paving the way to lead a comfortable and respectable life in the society. The option for remarriage being legally permissible, the widow should be encouraged for remarriage. Therefore, she should not be punished by depriving her from the compensation for the death of her husband. Refusal to give compensation only on the ground of remarriage would amount to discouraging the widow remarriage system, which system is good for the health of civilized society. A widow, if she can find a suitable husband, even during the pendency of her claim petition, cannot be expected to wait to enter into remarriage till the disposal of her claim petition. The pendency of the claim petition and delay in such disposal cannot be her fault. From the perspective of a welfare and civilized society, the remarriage of the widow cannot be discouraged in any manner. Therefore, there cannot be any impediment or restriction compelling a widow not to remarry till the disposal of her claim petition. Admittedly, for the welfare and betterment of the society, the remarriage of the widow is beneficial. Therefore, there should be incentive for such remarriage towards betterment of the society. Moreover, her right to get the compensation accrued to her much prior to her remarriage. In fact, she wanted to realize the compensation, which she earned prior to such remarriage. What she earned under the statute at a particular point of time can't be denied on the ground that there was delay in disposal of legal proceeding. The M.V Act does not provide any provision, by which such right can be taken away due to the subsequent remarriage, that too after filing the claim petition. The loss both mental and financial caused to her due to death of her husband cannot be suitably compensated by the subsequent marriage. Even after her remarriage, a widow generally does not enjoy the same status and benefit of decent life as she used to get

during the life-time of her deceased husband. In the present case in hand, there is nothing on record to find that, after her re-marriage, the claimant widow used to get the same amount of financial benefit which was available to her during the life-time of her deceased husband. There is no evidence regarding the financial condition of her second husband. A widow may enter into the second marriage due to various reasons and such remarriage may not be a suitable substitute for all purposes including financial support. She may not get the pecuniary support, which she used to get from her deceased husband. Therefore, it cannot be held that the pecuniary loss caused due to death of her deceased husband was compensated by the subsequent marriage and as such she can't get the compensation as claimed for."

15. In the instant case, the wife of the deceased has filed O.P.No.272 of 2000 on the file of learned Chairman, Motor Accident Claims Tribunal, Adilabad but the mother of the deceased filed a transfer petition before the High Court seeking transfer of O.P.No.272 of 2000 from the file of learned Chairman, Motor Accident Claims Tribunal, Adilabad to the file of Chairman, Motor Accident Claims Tribunal, Nizamabad to try along with O.P.No.677 of 2000. Accordingly, the said transfer petition was allowed and O.P.No.272 of 2000 was transferred to the file of Chairman, Motor Accident Claims Tribunal, Nizamabad and renumbered as O.P.No.45 of 2002. Thus, it is clear that the wife of the deceased got remarried during the pendency of the claim petition.

16. Further, the learned Tribunal awarded compensation of Rs.2,00,000/- to the wife of the deceased i.e., Rs.52,070/- towards loss of contribution for eleven months i.e., till the date

of remarriage, Rs.5,000/- towards consortium, Rs.42,930/- towards love and affection and Rs.1,00,000/- towards mental agony. The learned Tribunal has not awarded any amount under loss of contribution/loss of dependency beyond the remarriage of the wife of the deceased with another person. As stated supra, the wife or mother of the deceased have not preferred any appeal seeking enhancement of compensation. The only contention of the learned counsel for the appellant/mother of the deceased is that since the wife of the deceased i.e., respondent No.1 in O.P.No.677 of 2000 got married within 10 months after the death of the deceased and also begotten child, she is not entitled for compensation of Rs.2,00,000/- except loss of consortium and loss of income, more particularly, when the wife of the deceased already received Rs.8,50,000/-, Rs.15,000/- (FD Amount), 8 tulas of gold as per the agreement dated 05.12.2000 towards full and final settlement. It is to be seen that the said alleged agreement dated 05.12.2000 is not placed either before the learned Tribunal or before this Court. Thus, this Court is not inclined to go into the merits and demerits of the case so far as the alleged agreement is concerned. Moreover, there is no evidence to establish that the wife of the deceased has received the above

said emoluments as per the said alleged agreement. As stated supra, the learned Tribunal has awarded compensation amount to the wife of the deceased only until the date of her remarriage. Even as per the version of the appellant/mother of the deceased, the wife of the deceased is entitled for loss of consortium and loss of income. The learned Tribunal has awarded Rs.5,000/- towards loss of consortium and Rs.52,070/- towards loss of contribution. The remaining part of compensation awarded by the learned Tribunal is Rs.1,00,000/- towards mental agony.

17. It is to be seen that as on the date of filing of the petition, the age of the wife of the deceased was 20 years, which is tender age for a women to lose her husband. Had the deceased been alive, the question of remarriage by his wife does not arise. The wife of the deceased may not get the pecuniary support, which she used to get from her deceased husband, as such, it cannot be construed that the pecuniary loss caused due to death of her deceased husband was compensated by the subsequent marriage. In the absence of a sufficient financial support and social security, such young widow may get exposed to any kind of exploitation. The loss both mental and financial caused to her due to death of her husband cannot be suitably compensated by

the subsequent marriage. Even after her remarriage, a widow generally does not enjoy the same status and benefit of decent life as she used to get during the life-time of her deceased husband. It is also to be noted that the remarriage of the wife of the deceased is not on account of divorce. In such circumstances, it cannot be said that the wife of the deceased is not entitled for compensation on account of her remarriage. It is not even the case of the appellant/mother of the deceased that the compensation awarded to the wife of the deceased ought to have been awarded to her i.e., appellant/mother of the deceased and in fact the appellant/mother of the deceased is seeking dismissal of the claim petition filed by the wife of the deceased. There is no provision for dismissing the claim petition filed by wife of the deceased merely on the ground that the wife/claimant has remarried another person. Thus, viewed from any angle, there is no justification in the arguments of counsel for the appellant to dismiss the claim petition of the wife of the deceased.

18. In view of the above facts and circumstances, the appellant/mother of the deceased failed to establish any of the grounds enabling this Court to interfere with the well reasoned

impugned order passed by the learned Tribunal. Hence, this appeal is devoid of merits and liable to be dismissed.

19. In the result, the Appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

Date: 07.03.2025
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JUSTICE M.G. PRIYADARSINI