

**CMA.No.2521 of 2018****WEB COUNCIL M.DHANDAPANI, J**

This matter is listed today under the caption “For Being Mentioned” at the instance of the learned counsel for the petitioner.

2. It is brought to the notice of the Court by the learned counsel for the appellant that in the judgment dated 07.11.2023 in paragraph no.10 though it is mentioned that the appellant is not entitled to get interest from 31.03.2010 to 10.01.2012. There is a typographical error mentioned in the said para, it has to be mentioned as "the first respondent". Further, in respect of the interest, the first respondent is entitled to get 7.5% and in the judgment, it is mentioned as 12%. Therefore, the learned counsel prays to make necessary corrections and to issue fresh order copy.

3. In view of the above, para-10 of the judgment shall stand recalled and in place of para-10, the following paragraph shall stand substituted :-

“10.In the result, the Civil Miscellaneous appeal is allowed. The appellant insurance company is directed to deposit a sum of Rs.4,03,800/- with interest 7.5% interest and



WEB COPY



costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the award amount with interest and costs, by filing necessary applications before the Tribunal. The first respondent is not entitled to get interest from 31.03.2010 to 10.01.2012. No costs. Consequently, connected miscellaneous petitions are closed".

5. Registry is directed to carry out the necessary correction and issue fresh order copy to the parties.

18.11.2024

rli



WEB COPY



3

M.DHANDAPANI.J

rli

CMA.No.2521 of 2018

18.11.2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2521 of 2018
and CMP.No.19198 & 19200 of 2018

National Insurance Company Limited,
Mysore Branch Office,
No.371, A Third Floor,
British Shopping Complex,
Ramaswamy Agencies,
Mysore,

...Appellant

Vs

1. Komala

2. Silver Cloud Estates,
Private Limited,
1/12, 2A Silver Cloud Estates,
Cuddalore-643 211,
Nilgiri District.

...Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment passed in MACT OP.No.1 of 2012 dated 13.08.2015, on the file of the Motor Vehicle Accidents Claims Tribunal District Court, Udagamandalam,



For Appellant : Mrs.N.B.Surekha
For Respondents : Dr.S.Suriya Legal Aid counsel R1
R2 – No appearance

J U D G M E N T

This appellant/Insurance company has come forward with the present appeal against the judgment passed in MACT OP.No.1 of 2012, dated 13.08.2015, on the file of the Motor Vehicle Accidents Claims Tribunal District Court, Udagamandalam,

2.Brief fact which are necessary for disposal of this appeal are as follows:

On 01.03.2008 at about 08.30 hrs, while the deceased Viswanathan was driving the vehicle bearing Reg. No.TN 43 Z 1684 loaded with gunny bags packed with coffee seeds from silver cloud factor to Pollachi, in the opposite direction, a tipper lorry driven by its driver in a rash and negligent manner, to avoid the accident, the deceased turned the vehicle on the left side of the road and the lorry hit the wall and capsized, due to which, the deceased fell down and the the bags piled on the deceased and thereby, the said Viswanathan died. Thereafter, the dependent of the deceased, who is the wife, has filed a claim petition under Section 166 M.V.Act, claiming



compensation of Rs.15,00,000/- before the Motor Accidents Claims

Tribunal.

3. Before the Tribunal, during trial, in order to prove the case, the claimants have examined three witnesses viz., PW1 and PW2 and marked Exs.P1 to P7, On the side of the Insurance Company, no one was examined and three documents were marked. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition and awarded a sum of Rs.8,36,200/- as compensation to the claimant along with interest, aggrieved by the said award, the appellant/insurance company has filed the present appeal before this Court.

4. The learned counsel for the appellant submitted that the deceased person is a tortfeasor and he was working as an employee of the insured, the appellant is not liable to pay any compensation to the claimant. The petition filed before the Tribunal is not maintainable, since the claimant herein had already filed application before the Workmen Compensation Court and the same was dismissed for non prosecution. The compensation awarded by the Tribunal is highly excessive and therefore, the award passed by the Tribunal



is liable to be quashed.

WEB COPY

5. Per contra, the learned counsel for the claimant submitted that the deceased working with the second respondent and the second respondent is the owner of the insurance company, which was insured with the appellant. The accident has occurred during employment and therefore the appellant is liable to pay the compensation to the claimant. The Tribunal, considering the entire facts, has rightly passed the award, which does not require any interference.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The factor and manner of the accident is not in dispute and the death of the deceased is also not disputed by the parties. Admittedly, the deceased person was driving the van which was owned by the second respondent and insured with the appellant herein and to avoid the accident, the deceased turned the vehicle and therefore, the vehicle was capsized and thereby, he lost his life. The deceased person is a tort-feaser and he is not a



third party. Hence, the claimant is entitled to get compensation under Section 166 MV Act. However, the deceased is the employee of the second respondent. Hence, under section 147(i)(b) of the MV Act, the claimant is entitled to claim as against the appellant as well as the second respondent. However, the claimant has filed a petition before the Workmen compensation court, WC. No.19/2009 and the same was dismissed for non-prosecution on 31.03.2010. The accident had happened during the employment and however, there is no bar for claiming compensation under the workmen compensation Act.

8. In the present case, the claimant has rightly approached the workmen compensation Court and hence, this Court is inclined to covert the claim petition under Section 166 of MV Act into Section 10 of the Workmen Compensation Act as followed by the decesion rendered by the Hon'ble Division Bench of this court reported in 2009 (1) TNMAC 458.

9. Further, the accident had happened in the year 2008. The Tribunal has fixed the monthly income of the deceased is at Rs.5700/-, which is excessive. As per the catena of decision, a sum of Rs.4,000/- is fixed by this



Court and the loss of income is at **Rs.3,98,800/-** (Rs.4000X12X17X1/3) and apart from that, the claimant is entitled to get a sum of **Rs.5000/-** towards funeral expenses.

10. In the result, the Civil Miscellaneous Appeal is allowed. The appellant insurance company is directed to deposit a sum of Rs.4,03,800/- with 12% interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. on such deposit, the claimant is permitted to withdraw the award amount with interest and costs, by filing necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous appeal is closed. However, the respondent is not entitled to get interest from 31.03.2010 to 10.01.2012. No costs. Consequently, connected miscellaneous petitions are closed.

07.11.2023

rli

Index : Yes

Speaking Order : Yes

rli



10

To
WEB COPY

The Motor Vehicle Accidents Claims Tribunal District Court,
Udagamandalam,



WEB COPY



11

M.DHANDAPANI,J.

Rli

C.M.A.No.2521 of 2018

07.11.2023