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C.M.A(MD)No.16 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.08.2024

Pronounced on : 19.10.2024

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THE HONOURABLE MR.JUSTICE G.ILANGOVAN

C.M.A(MD)No.16 of 2021

and

C.M.P(MD)No. 264 of 2021

Branch Manager
The Oriental Insurance Company Ltd.,
360/21, Sathyamoorthy Road,
Second Floor, Pudukottai.

... Appellant / 2nd Respondent

Vs.

1.R.Vijayashanthi

2.Minor.Dwaraka

3.Minor.Athirai

4.4.V.K.Mani

5.M.Valli

6.M.Vellaichamy

7.Radhika

(Respondents 2 and 3 are represented
by mother and guardian the 1st respondent)

... 1 to 7 respondents / Claimants 1 to 7



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8.Karuppaiah

9.Alagusundaram

... 8 and 9 Respondents / Respondents 1 and 3

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to set aside the order of the Motor Accidents Claims Tribunal cum Additional District Judge, Pudukottai, made in M.C.O.P.No.258 of 2013 dated 15.07.2020.

For Appellant : Mr.E.Chandrasekaran

For RR1 to 5 & 7 : Mr.K.C.Maniyarasu

For RR6 & 8 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the order of the Motor Accidents Claims Tribunal cum Additional District Judge, Pudukottai, made in M.C.O.P.No.258 of 2013 dated 15.07.2020.

2. The case of the claimants is that on 18.03.2012 at about 4.00 p.m., the deceased Ravichandran was riding a four wheeler from east to west



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direction, at that time, there was a ditch dug on the left hand side of the road.

There was no indication about the ditch. So it capsized on the ditch and Ravichandran died on the spot. He was aged about 30 at the time of the occurrence and he is a driver by profession and earning Rs.70,500/- per month. He was aged about 30 at the time of the occurrence. Claiming compensation amount of Rs.50 Lakhs, claim application was filed by the claimants against the respondents.

3. That was resisted by the appellant herein by filing counter. The deceased was not owning proper driving license at the time of the occurrence. The first respondent permitted the vehicle to be driven by an unlicensed person. Since the deceased was responsible for the accident, the claimants are not entitled for any compensation from the insurance company.

4. Regarding the first aspect of negligence, the Tribunal recorded a finding that the occurrence took place because of the rash and negligent driving on the part of the deceased himself. The age of the deceased was fixed at 30 and the notional income was fixed at 7,500/-. 40% was added to the future prospects and 1/5 of the amount was deducted considering the



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number of dependants and finally the loss of dependency was fixed at Rs.8,400/- per annum. Since he was aged about 30 at the time of accident, multiplier 17 was adopted. The loss of dependency was fixed at Rs.17,13,600/-. To that other customary amounts were added and finally awarded a sum of Rs.18,93,600/-. 50% was ordered to be deducted towards contributory negligence. So, the balance amount of Rs.9,46,800/- was ordered to be paid and deposited by the second respondent on behalf of the first and third respondent against which this appeal is preferred by the insurance company.

5. Heard both sides.

6. Learned counsel for the appellant would submit that there was no driving license for the deceased. Since the occurrence took place because of his own negligence, if at all the claimants are entitled only for personal accident coverage.

7. Per contra, learned counsel for the respondent would submit that, he is the driver of the vehicle which belongs to the first respondent herein. It is



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not the case of the claimants that the deceased was employed under the first respondent or the third respondent, as the case may be. On what ground the deceased drove the vehicle is not stated by him properly. Now we will go to the evidence of P.W.1 on this aspect. During cross examination, he has stated that he was a driver by profession. But it is not clearly stated as he was working as driver under the first respondent. It was suggested to the claimant that she ought to have filed claim application before the Workmen Compensation Forum.

8. The respondents 1 and 3 remained ex parte before the Tribunal. It is now stated that if the employer - employee relationship is proved and there is sufficient evidence for the same, even in case of the claim under the Motor Vehicles Act, the Tribunal is at liberty to assess the compensation on the basis of provisions of Workmen Compensation Act. The Hon'ble Division Bench of this Court has held in the case of ***United India Insurance Co. Ltd., Vs. Krishnaveni and two others***, reported in ***2020 (2) TN MAC 630*** that even in case, where M.C.O.P. petitions are filed, there is no bar for the Tribunal to convert the same into one under the provisions of Workmen Compensation Act, if the employer - employee relationship is not disputed. But here,



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absolutely, there is no evidence on record to show that the person was working as an employee under the first respondent or the third respondent as the case may be. In the petition, it has been stated as follows:

4. இறந்து போன ரவிச்சந்திரன் 30 வயதுள்ளவர். திடகாத்திரத்துடனும், ஆரோக்கியத்துடனும் இருந்தார். இறந்துபோன ரவிச்சந்திரன் பி.எஸ்.சி, பட்டதாரி. சொந்தமாக டிரைவராக பணிபுரிந்து மாதம் 1-க்கு ரூ.17,500/-ம் வரை சம்பாதித்து வந்தார். இறந்துபோன ரவிச்சந்திரன் திருமயம் பகுதியில் நன்கு பரிச்சமானவர். ஆனால் அவருக்கு வருடம் முழுவதும் வேலை பார்த்துக்கொண்டே இருக்கும். இறந்துபோன ரவிச்சந்திரன் தான் சம்பாதித்த பணம் முழுவதையும் தன் குடும்பத்திற்கே கொடுத்து தன் குடும்பத்தை நல்ல நிலைக்கு கொண்டுவர வேண்டும் என்று யேராது பாடுபட்டுக்கொண்டிருந்தார். அந்த வேலையில் இந்த கோர விபத்தில் ரவிச்சந்திரன் இறக்காமல் உயிருடன் இருந்திருந்தால் அவரது குடும்பத்தை நல்ல நிலைக்கு கொண்டு வந்திருப்பார்.

So this portion of the petition shows that it is not pleaded that he was working under the first respondent or the third respondent. When it is not the plea in the claim petition, even Workmen Compensation Act cannot be invoked.

9. Now coming to the aspect of possession of driving license, learned counsel for the appellant as stated above submitted that there is no driving



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license for the deceased. When there is a finding by the Tribunal, the deceased did not own any proper driving licence. But no driving licence was produced by the claimant either before the trial Court or before this Court. It was simply suggested to R.W.2 that the license could have been obtained by the deceased from some other district. But it is not so here. It was not suggested by R.W.1 that the deceased was owning the proper driving licence. In spite of the above suggestion made to R.W.1, the claimant not produced the copy of the driving licence of the deceased.

10. In view of the above said observation, the claimants are not entitled for any compensation to be payable by the insurance company namely the appellant herein. So far as, the personal accident coverage is also concerned, it is also submitted that no coverage is available. So the insurance company can be absolved of its liability. Since the deceased himself is a tortfeasor, the claimants are not entitled for any compensation. The order of the Tribunal is not legal, per contra, it is per se illegal.

11. Accordingly, this Civil Miscellaneous Appeal is allowed, the award passed by the Motor Accidents Claims Tribunal cum Additional District



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Judge, Pudukottai, made in M.C.O.P.No.258 of 2013 dated 15.07.2020, is set aside and the claim application of the claimant is dismissed. Consequently, connected miscellaneous petition stands closed. No costs.

19.10.2024

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

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To

- 1.The Motor Accidents Claims Tribunal cum Additional District Judge,
Pudukottai.
- 2.The Section Officer, Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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Pre-Delivery Judgment made in
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