

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.376 of 2015

and C.M.P.No.17497 of 2016

Ms.Reliance General Insurance Co. ltd.
Balmer Lawrie House,
No.628, Anna Salai,
Teynampet, Chennai - 600 018.

... Appellant/R2

versus

1. Chinnammal

..R1/Petitioner

2. S.Sundara Raju

..R2/R1

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 30.07.2014, made in M.C.O.P.No.4314 of 2009, on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.N.Vijayaraghavan
For R-1 : Mr.K.Varadhakamaraj
For R-2 : No appearance

JUDGMENT

A claim petition filed under Section 166 of the Motor Vehicles Act, claiming compensation in respect of death of one K.Chandrasekaran, was filed by his mother Chinnammal, which resulted in, the claims Tribunal allowing the claim for a sum of Rs.8,89,000/-. The break-up details of the compensation read as under:

Loss of dependency	-	Rs.8,64,000/-
Love and affection	-	Rs. 15,000/-
Funeral Expenses	-	Rs. 10,000/-

Total - Rs.8,89,000/-

2. The facts of the case, which are relevant for deciding the appeal is that the deceased K.Chandrasekaran was driving the Tata Sumo bearing Reg.No.TN10R 6487 from Chennai to Tindivanam in GST Road at Anna Nagar, Achirapakkam and at that point of time, the vehicle slipped and went and tumbled, due to which, the driver, i.e. deceased died on the spot and others travelling in the vehicle were injured. In respect of death of the deceased, the mother of the deceased filed the claim petition for compensation. The award has been passed as against the Insurance Company appellant (second respondent in M.C.O.P.No.4314 of 2005). Challenging the liability to pay compensation under the Motor Vehicles Act, 1988, the Insurance

Company has preferred this appeal.

3. The main contention of the learned counsel for the appellant/Insurance Company is that when the deceased himself was solely responsible for the accident, the claim under Section 166 of the Motor Vehicles Act 1988, which is based on the subject to proof of negligence, would not become applicable; therefore, the claim petition under the Motor Vehicles Act cannot be sustained. In other words, the contention is that for the fault of the victim himself, the claimant cannot make any claim as against others, who are not at all responsible for the accident.

4. Perusal of the award passed by the claims Tribunal would go to show that basis of liability is not at all discussed. The Tribunal has simply given a finding that there was an accident in which the deceased died and therefore, the Insurance Company is liable to pay compensation.

5. It is not in dispute that the deceased was an employee under the first respondent. Therefore, even though the claim petition is not maintainable under the provisions of the Motor Vehicles Act, 1988, the claim petition is maintainable under the provisions of the Employee's Compensation Act, 1923, where the issue of negligence has no relevance.

6. A similar issue came to be considered by this Court in the case of M.Anbalagan vs. K.M.Asalm Bash and others, reported in 2015 (2) TN MAC 362 (DB), in which, it has been held that when the claimant itself is a tortfeasor, even though he is found not entitled to claim compensation under Section 166 of Motor Vehicles Act; if he is entitled to claim for compensation under Employee's Compensation Act, it is the duty of the claims Tribunal to adjudicate his claim under provision of Employee's Compensation Act. There is also a provision that when a victim is entitled to choose any one of the forum, the only bar is, the claimant cannot make the claim under both the Act.

6.1. The claim under Section 163A of the Motor Vehicles Act also requires proof that the victim is not at fault and therefore, the claim is not maintainable under the provisions of Section 163A of the Motor Vehicles Act is the contention of the learned counsel for the appellant. However, it is contended by the learned counsel for the respondent/claimant that the claim can be considered under the provisions of the Employee's Compensation Act.

6.2. Therefore, the claim of the petitioner has to be answered in the light of the provisions of Employee's compensation Act.

6.3. The compensation is calculated as per the provisions of Employee's Compensation Act, which reads as under:

Age of the deceased at the time of accident	24 years
Occupation of the deceased	Driver
Factors as per the Schedule IV of E.C. Act, 1923	218.47
Minimum wages for period of 01.04.2008 to 31.03.2009 for Driver	Rs.4,376/-
Amount of compensation as per E.C.Act	Rs.4376 / 2 = Rs.2188 Rs.2188 x 218.47 = Rs.4,78,012/-
Funeral expenses	Rs.2,500/-
Total	Rs.4,80,512/-

7. In the result, the appeal is partly allowed with a finding that the claim is maintainable under the Employee's Compensation Act, 1923, even though for want of necessary pleadings, the claim may not be maintainable under Section 166 of the Motor Vehicles Act.

7.1. There shall be an award for a sum of Rs.4,80,512/- payable by the appellant with interest at the rate of 12% from the date of petition till the date of deposit, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment.

7.2. It is represented that the Insurance company has already deposited the entire award amount. The claimant shall withdraw the amount of compensation as ordered by this Court, as detailed in para 7.1 and balance if any, shall be withdrawn by the Insurance Company. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
IV Court of Small Causes, Chennai.

2. The Section Officer
V.R. Section, High Court, Madras

+1 CC to Mr. M.B. Gopalan, Advocate sr 73974

+1 CC to Mr. K. Varadha Kamaraj, Advocate sr 73157

C.M.A.No.376 of 2015

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