

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 04.08.2017****CORAM****WEB COPY****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.M.A(MD)No.15 of 2014**

1.Ratinam
2.Koodammal ... Appellants/Claimants Nos.1 & 2

Vs.

1.The Secretary,
Sattur Lorry Owners Association,
No.2/39, Madras Trunk Road,
Sattur.

2.The Manager,
National Insurance Company Limited,
No.155-1, Rose Buildings,
Main Road,
Kovilpatti.

... Respondents Nos.1 & 2/Respondents Nos.1 & 2

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and executable order dated 31.07.2012 passed in M.C.O.P.No.23 of 2009 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Sivakasi.

For Appellants	: Mr.D.Srinivasa Raghavan
For R-1	: Mr.K.Sekar
For R-2	: Mr.D.Sivaraman

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the award, dated 31.07.2012, passed in M.C.O.P.No.23 of 2009 by the Motor Accident Claims Tribunal/Subordinate Judge, Sivakasi.

2. It is a case of fatal accident, which took place on 12.09.2008 at about 05.45 a.m., near Peria Odaipatti in NH 7 road, opposite to Durgaiamman temple

3. It is the case of the claimants before the Tribunal that on the date of accident the deceased by name Murugan was travelling in a lorry bearing Registration No. TN 67 C 7665 as a Cleaner and when the vehicle reached Peria Odaipatti, near Durgaiamman temple, the above said lorry dashed behind the lorry bearing registration No.TN 04 L 3862, which was parked on the road and in the said accident, the said Murugan died on the spot.

<https://hdservices.courts.gov.in/cases/>

4.The claimants filed M.C.O.P.No.23 of 2009 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Sivakasi.



5. Before the Tribunal, the claimants examined three witnesses as P.Ws.1 to 3 and marked twelve documents as Ex.P.1 to P12. On the side of the Insurance Company, one witness was examined as R.W.1 and five documents were marked as Ex.R1 to R5.

6. The Tribunal after considering the arguments advanced on either side and also considering the evidence on record held that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing registration No.TN 67 C 7665. As the deceased travelled in the offending vehicle as a Cleaner and as per the Insurance policy, the restricted compensation of Rs.1,00,000/- has already been received by the first petitioner, the Tribunal dismissed the claim petition filed by the claimants.

7. Aggrieved by the said award, the appellants/claimants have filed this appeal seeking compensation.

8. The learned counsel appearing for the appellants submitted that the Tribunal erred in dismissing the claim petition filed by the appellants without appreciating the provisions of Sections 147, 140, 166 and 167 of M.V. Act. He further submitted that the accident occurred during the course of employment and separate premium under the Workmen Compensation Act has also been paid and therefore, the award passed by the Tribunal is liable to be set aside and compensation may be granted under the Workmen Compensation Act.

9. In support of his submission, the learned counsel for the appellants relied on the judgment of the Division Bench of this Court in **The Oriental Insurance Company Limited., Pondicherry vs. Kaliya Pillai and another** reported in (2002) 3 M.L.J 777. The relevant portion of the said judgment reads as follows:

6.....There is a specific finding by the Tribunal that the deceased Tractor driver died in the course of his employment. Further, it is not disputed that there was a valid insurance on the date of the accident, and accordingly the insurer was liable to the extent of liability under the Workmen's Compensation Act. In other words, we hold that even though the insurance company was not liable under the provisions of the Motor Vehicles Act, it would be proper to assess the compensation under the Workmen's Compensation Act and award the same in favour of the claimants. On this ground, instead of directing the respondents/claimants to go before the Commissioner for Workmen's Compensation Act, in order to shorten the litigation and also in the interest of justice, we decided to dispose of the appeal by determining the appropriate compensation in favour of the claimants.



7. As per Sec. 3 of the Workmen's Compensation Act, undoubtedly the employer is liable to pay compensation in respect of personal injury or death caused to a workman by accident arising out of and in the course of his employment in accordance with the provisions of Chapter II. Sec. 4 provides how the amount of compensation is to be determined. As per Sub-sec.(1) of Sec. 4A, compensation under Section 4 shall be paid as soon as it falls due. It is not disputed that for arriving at a just compensation in case of permanent disablement and death the factors that are provided under Schedule IV of the Workmen's Compensation Act have to be taken note of. Though the claimants have produced salary certificate Ex.P4, the owner of the tractor, who issued the said certificate though he is a party (first respondent in O.P.No.171 of 1998) has not chosen to examine himself to substantiate the contents of Ex.P4. However, in the light of Ex.P6 driving licence to drive tractor and trailer and considering the fact that the deceased died while driving the tractor, it would be proper to hold that he would have earned Rs.2,000/- per month as a driver of a tractor. By applying the formula prescribed under Schedule IV, we fix the compensation of Rs.2,16,000/-. The procedure and method adopted above has not been disputed.

10. The learned counsel appearing for the respondents have no objection for converting the claim into that of one under the Workmen's Compensation Act.

11. Heard the submissions made on either side and perused the judgment cited by the learned counsel appearing for the appellants and the materials available on record.

12. Perusal of the order passed by the Tribunal shows that the accident occurred during the course of employment and it is seen that the deceased was working as a Cleaner and therefore, a sum of Rs.4000/- can be taken as monthly income of the deceased and therefore, the compensation is determined as follows:

Monthly wages of the deceased	:Rs.4,000/-
Age of the deceased at the time of accident	:25 years
Relevant Factor	:216.91
Formulae	: 50% of monthly wage X Relevant Factor
	: Rs.4000 X 50/100 X216.91
For Loss of Income	: Rs.4,33,820/-
Funeral Expenses	: Rs. 5,000/-
Total	:Rs.4,38,820/-

13. In the result,

(i) this Civil Miscellaneous Appeal is allowed and the order of the Tribunal, dated 31.07.2012 passed in M.C.O.P.No.23 of 2009 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Sivakasi, is set aside and an award is passed for Rs.4,38,820/- (Rupees Four Lakhs Thirty Eight Thousand Eight Hundred and Twenty Only) in favour of the appellants/claimants with interest at the rate of 7.5% percent annum from the date of accident till realisation and proportionate costs under the Workmen Compensation Act. Out of the said amount, both the appellants are entitled to get Rs.2,19,410/- (Rupees Two Lakhs Nineteen Thousand Four Hundred and Ten Only); and

(ii) Since it is stated that already a sum of Rs.1,00,000/- has already been paid to the claimants, the same shall be deducted from the total award amount of Rs.4,38,820/- and the balance amount of Rs.3,38,820/- shall be deposited by the second respondent/Insurance Company within a period of eight weeks from the date of receipt of a copy of this Judgment. If the amount is not deposited within the stipulated time, it will carry 12% interest from the date of petition as per the Workmen Compensation Act. On such deposit being made by the Insurance Company, the appellants are permitted to withdraw their respective shares with proportionate interests and costs without filing any formal application. No Costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To,

1. The Sub Judge,
Motor Accident Claims Tribunal
Sub Court, Sivakasi.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.D.SIVARAMAN Advocate in SR. No. 70714
+1cc to Mr.D.SRINIVASA RAGHAVAN Advocate in SR. No. 70549
PM
JS/MR.KKR/SAR.4/8.11.2017/4P-5C

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