

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3180 of 2017
and CMP.No.19535 of 2017

The United India Insurance Company Ltd.
280, Ooty Main Road
Mettupalayam, Coimbatore District
Local Branch Office
United India Insurance Company Ltd.,
3, Sakthi Main Road, Griram Buildings
Gobichettipalayam

..Appellant/
2nd respondent.

-Vs-

1.Dilsath Begam
2.Minor.Sydul Fathima
represented by next friend and mother
Dilsath Begum
3.Yasar Arafath
4.P.Raja

..Respondents/Petitioners

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and decree dated 24.10.2016 made in M.C.O.P.No.275 of 2015 on the file of Motor Accident Claims Tribunal, 3rd Additional District and Sessions Court, Gobichettipalayam.

For appellant : : Mr.D.Bhaskaran

For Respondents : : Mr.MA.P.Thangavel for R1 to R3.
R4-Exparte before Tribunal.

J U D G M E N T

The Appellant is the Insurance company, who is the 2nd respondent before the Tribunal, has filed this appeal challenging the Judgment and decree dated 24.10.2016 made in M.C.O.P.No.275 of 2015 on the file of Motor Accident Claims Tribunal, 3rd Additional District and Sessions Court, Gobichettipalayam.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the

Tribunal. It is a fatal case. The case of the Petitioners is that on 09.01.2015 at about 1.30 hours as the deceased Jahir Husan who was working as a driver in the Lorry bearing Reg.No.TN-40-E-2413, was attempting to fold the Tarpaulin cover which was kept in the cabin of the said lorry at the CMDA Truck Terminal complex at Madavaram, suddenly slipped from the top of the cabin, fell down and suffered fatal injuries on his head, spinal cord, legs and died on the spot itself. According to the Petitioners/claimants, the accident occurred during the course of employment of the deceased, who was working as a driver in the lorry belonging to the 1st respondent which was insured with the 2nd respondent. The deceased was aged 44 years and he was earning Rs.15,000/- per month by working as a driver. The Petitioners who are the wife and children of the deceased are dependant on him. Due to sudden death of the bread winner, the petitioners are suffering financially and also due to loss of love and affection. Thus, the Petitioners seek a sum of Rs.20,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent/Insurance company contends that the age, occupation and monthly income of the deceased as well as narration of the accident stated in the petition is denied. The Petitioners ought to have filed the petition claiming compensation before Commissioner of Workmen's compensation and not before the Motor Accident Claims Tribunal. The claim of the Petitioners about the manner in which the accident occurred is denied. The plea of the Petitioners for the compensation under different heads is highly excessive. The 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioners examined P.W.1 to P.W.3 and produced documents Ex.P.1 to Ex.P.14. The respondent examined R.W.1 and produced document Ex.R.1. The Tribunal, after analysing the evidence on record found that the deceased suffered fatal injuries while on employment and as the petition was filed u/s.163A of the Motor Vehicles Act, held that the Tribunal has got jurisdiction to try the same and passed an award for a sum of Rs.8,31,000/- payable by the respondents to the Petitioners. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance company has come forward with the present appeal.

5. Heard both sides and perused the records carefully.

6. The learned counsel for the appellant/2nd respondent/Insurance company contends that the claim petition is not maintainable u/s.163A of the Act. The Tribunal erred in taking note of the fact that the accident occurred due to negligence of the deceased himself and as such, the petitioners

ought to have proceeded only under the Workmen's Compensation Act. Further as the claimants pleaded that the income of the deceased is more than Rs.40,000/- per annum, the petition u/s.163A of the MV Act is not maintainable. The Tribunal wrongly fixed the income of the deceased at Rs.7000/- per month. The Tribunal ought to have dismissed the petition. Thus, the 2nd respondent/appellant sought to set aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the claimants contends that the Tribunal decided the issue correctly and concluded that the Petition u/s.163 A of the M.V.Act is maintainable. The award passed by the Tribunal is just and proper and there is no need to modify or set aside the award. Thus, the Petitioners/claimants seeks dismissal of the appeal.

8. The fact that the deceased was employed in the 1st respondent lorry and he died during the course of employment is admitted. The wife of the deceased who deposed as P.W.1 clearly stated about the fact of her deceased husband being employed as driver with 1st respondent and during the course of employment as he was attempting to remove the tarpaulin cover of the lorry, fell down, suffered fatal injuries and died on the spot. However, P.W.1/the wife of the deceased was not an eyewitness to the occurrence. The Cleaner of the Lorry who deposed as P.W.2, stated that the deceased and himself were employed as driver and cleaner in the 1st respondent Lorry and on the occurrence day, around 1.30 a.m., while the lorry was carrying vegetable load from Mettupalayam to Chennai, the deceased after parking the vehicle, was attempting to fold the tarpaulin cover and at that time slipped and fell down, suffered fatal injuries in his head and died on the spot. The owner of the lorry who is the 1st respondent in the claim petition deposed as P.W.3 and stated about the fact of deceased being employed as driver in his lorry.

9.1. The Police registered Ex.P.1-FIR on the basis of complaint given by brother of the deceased. After completion of investigation, the Police laid Ex.P.5-charge sheet stating that the deceased fell down from the lorry and died on the spot. The driving licence of the deceased is produced as Ex.P.6. Thus, it is clear from the above said evidence that the deceased was employed as driver in the 1st respondent lorry and suffered fatal injuries on 09.01.2015 as stated above, resulting in his death on the spot. As such, it is clear that the deceased himself contributed to the occurrence due to his negligence attitude. In such circumstances, it will be appropriate to fix 50% negligence on the deceased himself for the occurrence.

9.2. The appellant/2nd respondent/Insurance company contends that the petition filed u/s.163A of the Motor Vehicles Act is not maintainable and the Petitioners ought to have sought for compensation under the Workmen's Compensation Act only since the occurrence took place during the course of employment.

9.3. Refuting the contention of the 2nd respondent/Insurance company, it is pointed out by the learned counsel for the Petitioners that the accident admittedly took place while the deceased was engaged in his employment and as such, even assuming the claim is not maintainable under Motor Vehicles Act, this court has got power to convert the same as the petition under Workmen's Compensation act and passed award. In support of the same, he relied upon the Ruling reported in 2010 2 TNMAC 319 [Divisional Manager, New India Assurance Co.Ltd., Vellore Vs. 1.Pottiammal and others]. It is apparent from the above said Ruling that the claim of the Petitioners is maintainable and is entitled for compensation as per Workmen's Compensation Act. In the said Ruling, it is held as follows:-

"13. The learned counsel appearing for the Respondents 1 to 4 also contended that only at the time of negotiating the curve, the vehicle capsized and the accident took place and not due to the jeep in question colluded with any other vehicle. At this juncture, the counsel after narrating the accident, contended that the Compensation Application under Motor Vehicles Act can be converted into the application under Workmen Compensation Act under Sections 3, 4 and 4-A of Workmen's Compensation Act, 1923, and relied upon the judgment reported in Oriental Insurance Company Ltd., Vs. Kaliya Pillai, 2002 (4) CTC 469.

14.Therefore, I am of the view that by invoking the judgment reported in Oriental Insurance Company Ltd., Vs. Kaliya Pillai, 2002 (4) CTC 469, I am converting this Application as to Workmen's Compensation Application and I answer this point accordingly."

9.4 The vehicle in which the deceased worked as driver was insured with the 2nd respondent/insurance company as evidenced by the Policy copy produced as Ex.R.1. It is clear from the evidence of R.W.1 that the deceased worked under 1st respondent and the lorry belonging to the 1st respondent was insured with the 2nd respondent. As such, the respondents are liable to pay the compensation.

10. The next point to be considered is quantum. The Tribunal after considering the evidence on record, on the basis of Ex.P.6- Driving licence of the deceased found his date of birth

as 15.10.1959. Even though in Ex.P.2-Post mortem report, the age of the deceased is mentioned as 40, considering the date of birth in Ex.P.6, the age of the deceased was fixed as 55 years by the Tribunal. The same is appropriate and correct. Further the tribunal on the basis of Ex.P.7-Legal Heir certificate, found that the petitioners are legal heirs and they are entitled to receive compensation.

11. The 1st petitioner who deposed as P.W.1 stated that the deceased was earning Rs.15,000/- per month. The owner of the lorry who deposed as P.W.3 stated that he paid the monthly salary of Rs.9000/- and daily allowance of Rs.150/- to the deceased. However, there is no proof produced by the Petitioner to prove the actual income of the deceased. As such, the Tribunal fixed the notional income of the deceased at Rs.7000/- per month.

12. Pointing it out, the learned counsel for the Petitioners/claimants contends that Heavy Vehicle drivers are in demand and they can easily earn Rs.500/- per day. Considering the same, it will be appropriate to fix the notional monthly income of the deceased at Rs.8000/- per month instead of Rs.7000/- fixed by the Tribunal.

13. As the deceased was aged 55 years, by applying the Workmen's compensation Act formula, the loss of dependency is arrived as under:-

$$\begin{aligned} & \text{Rs.8000} \times 50/100 \times 135.56 \\ & = \text{Rs.5,42,240/-} \end{aligned}$$

As provided for under Section 4A of the Workmen's Compensation Act, Rs.5000/- is provided towards funeral expenses. Thus the Petitioners/claimants are entitled for Rs.5,47,240/- as compensation from the 2nd respondent/Insurance company.

14. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) the quantum of the award is reduced to Rs.5,47,240/- from Rs.8,31,000/-.

(iii) The award will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

(iv) The Appellant/Insurance company is directed to deposit the entire modified compensation amount of Rs.5,47,240/- along with accrued interest, less the amount, if any already deposit, within a period of six weeks from the date of receipt of a copy of this order.

(v) The apportionment of the award amount is as under:-

1st claimant/wife - 40%

2nd and 3rd claimants/children-30% each.

On such deposit, the claimants 1 and 3 are entitled to withdraw the award amount by following the appropriate procedure before

the Tribunal. Insofar as 2nd claimant/minor daughter is concerned, her share shall be invested in a fixed deposit in a Nationalised Bank and the same shall be renewed periodically. The interest accrued therein shall be withdrawn by the 1st claimant/mother.

(vi) No costs. Consequently, connected CMP is closed.

nvsri

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal ,
3rd Additional District and Sessions Court, Gobichettipalayam.

+1cc to Mr.D.Bhaskaran, Advocate SR.NO.14326

+1cc to Mr.Ma.P.Thangavel, Advocate SR.NO.14999

GJ(CO)

sm:14.11.2018

C.M.A.No.3180 of 2017

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