

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A. No. 1927 of 2015

V.Sarasu

... Appellant/Petitioner

Vs.

1. Hariharan

2. Royal Sundaram Aliance Insurance Company Limited
Sundaram Towers, 46, Whites Road
Royapettah,
Chennai - 600 014. ... Respondents /Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P. No. 113 of 2008 dated 22.12.2014 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Athur.

For Appellant : Mr. S.Kaithamalai Kumaran

For Respondents : Mr. F.Terry Chellaraja (For R1)
Mr. M.Krishnamoorthy (For R2)

J U D G M E N T

The appeal is filed by the claimant against the judgment and decree dated 22.12.2014 passed in M.C.O.P. No. 113 of 2008.

2. The accident occurred on 24.02.2008 at 4.00 a.m. in K.K. Nagar, Santhavasal, Thiruvannamalai District and Santha Vassal Police station registered a case in Crime No. 90 of 2008, under Sections 279, 337 and 338 and 304A IPC. The appellant /claimant filed the claim petition under Section 163 (A) of the Motor Vehicles Act and the Tribunal found that the deceased is the son of the appellant /claimant, who was driving the vehicle and is a tort feisor and therefore, the Motor Accidents Claims Tribunal cannot entertain the claim petition in such circumstances.

3. The factum regarding the accident has not been disputed by the respondent /insurance company and the fact regarding the

death has also not been disputed by the respondent /Insurance Company. Only question is whether there is a policy coverage or not.

4. The learned counsel appearing on behalf of the respondent/ insurance company made a submission that since the deceased was driving the vehicle, there is a coverage under the policy. This apart, the deceased was a paid driver and therefore, there is a policy coverage as far as the insurance company is concerned.

5. No doubt, the claimant ought to have approached the Deputy Commissioner of Labour / Controlling Authority under the Workmen Compensation Act for the purpose of claiming compensation. Contrarily, the claim petition was filed before the Motor Accidents Claims Tribunal mistakenly. This court is of the considered opinion that such mistake would not result in injustice, so as to deny rightful compensation to be awarded.

6. A factum in the present case, is admittedly, the deceased was paid driver and there is a policy coverage. Therefore, the ingredients under Section 163(A) of the Motor Vehicles Act is covered. Only lacuna is that instead of filing an application before the Controlling Authority under the Workmen Compensation Act, the claim petition was filed before the Motor Vehicles Claims Tribunal. In view of the same, the grant of compensation cannot be denied and further, once again the claimant cannot be driven to the Controlling Authority under the Workmen Compensation Act, which becomes a lengthy process and the settlement would be delayed unnecessarily.

7. However, this Court is of the considered opinion that wherever the Tribunal found that claim petition under Section 163(A) is not maintainable in view of the fact that the claimant should approach the Deputy Commissioner of Labour / Controlling Authority under the Workmen Compensation Act, then the Tribunal ought to have rejected the claim petition before numbering and during the examination of the claim papers, the Registry of the Tribunal concerned itself shall return the papers by stating that the claim petition is to be filed before the Deputy Commissioner of Labour / Controlling Authority under the Workmen Compensation Act. Contrarily, entertaining the claim petition and keeping the same pending for few years and thereafter, dismissing the claim petition would cause prejudice to the interest of the claimants and further, the delay would result in denial of compensation within a reasonable period of time. Thus, all the Motor Accidents Claims Tribunal across the state of Tamilnadu on receipt of any such claim petitions under Section 163 (A) of the Motor Vehicles Act, while examining the papers if the claims are to be filed before the Deputy Commissioner of Labour /Controlling Authority under the Workmen Compensation

Act, the papers must be returned immediately with an endorsement and accordingly, the claimants without any further delay can approach the proper authority enabling them to get rightful compensation in accordance with the provisions of the Workmen Compensation Act.

8. This being the practice to be followed, this Court is of the opinion that the claim petitions are filed in a routine manner, which is not entertainable under Section 163(A) of the Motor Vehicles Act. The Tribunals are also dismissing such petitions after keeping the same pending for several years. When the matters are filed by way of an appeal before the High Court and then the High Court has to consider the claim petition and grant compensation. Such practice is to be discouraged.

9. The Tribunals are expected to be cautious, while numbering all such claim petitions, which all are otherwise to be filed before the competent authority under the Workmen Compensation Act. The Tribunal ought to have returned the papers with an endorsement regarding the maintainability, enabling the respective claimants to approach the Deputy Commissioner of Labour / Controlling Authority under the Workmen Compensation Act, contrarily, numbering the claim petitions and keeping the cases pending for several years before the Tribunal and ultimately, dismissing the same on the ground of maintainability. Undoubtedly, the same would create prejudice to the interests of the claimants, who all are accident victims and delay in settlement of compensation, which will affect their livelihood also.

10. In the case on hand, the accident occurred on 24.02.2008, the claim petition was filed in the year 2008 and the Tribunal dismissed the claim petition after a lapse of about 6 years i.e., on 22.12.2014. The present appeal is filed on 14.08.2015, which is now taken up for final hearing by this Court in the year 2020, after a lapse of about 12 years. The claimant is unable to get compensation even now. It is a painful situation, where long delay defeats justice. In all such cases, if appropriate actions are taken by the Tribunal at the initial stage, such hardships would have been avoided. Contrarily, keeping the matter pending for many number of years and ultimately, dismissing the same on the ground that the claimant should approach the authority under the Workmen Compensation Act, this Court is of the opinion that such practice is to be averted in all circumstances. The Tribunal should ascertain the maintainability of the claim petition under the Motor Vehicles Act. If at the time of scrutinizing the claim papers, a decision is to be taken either to return the papers, enabling the claimants to approach the authorities under the Workmen

Compensation Act or the claim petition is entertained under the Motor Vehicles Act, if it is otherwise maintainable.

11. Considering the facts and circumstances of the case on hand, this Court is inclined to pass the following order:-

(1) the Judgment and decree dated 22.12.2014 passed in M.C.O.P. No. 113 of 2008 is set aside.

(2) The appellant /claimant is entitled for a total compensation of Rs.3,54,500/- along with interest @ 7.5 % p.a. from the date of claim petition till the date of realization and the compensation granted is detailed as under:-

1. Loss of income (Rs.40,000/- X 17/2)	Rs.3,40,000/-
2. Funeral expenses	Rs. 2,000/-
3. Love and Affection	Rs. 10,000/-
4. Loss of estate	Rs. 2,500/-
Total	Rs. 3,54,500/-

Total compensation payable is Rs.3,54,500/-.

12. The second respondent/ insurance company directed to deposit the entire award amount with interest of @ 7.5% per annum, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the claimant is permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made only through RTGS. The claimant is liable to pay court fee for the enhanced compensation amount.

13. With this modification, the judgment and decree dated 22.12.2014 passed in M.C.O.P. No. 113 of 2008 is set aside and accordingly, the Civil Miscellaneous Appeal stands allowed. No costs.

14. All the Motor Accidents Claims Tribunal across the State of Tamil Nadu and Pondicherry are directed to examine the claim petition at the filing stage itself and ascertain, whether such petitions are maintainable under Section 163(A) of the Motor Vehicles Act or to be filed before the Workmen Compensation or not. If it is found that the claim petitions are to be filed under the Workmen Compensation Act, the papers are to be returned immediately without causing any undue delay enabling the claimants to approach the Controlling Authority under the Workmen Compensation Act.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Athur.

Copy to

1. The Registrar General,
High Court, Madras.

2.The Sub Assistant Registrar,
A.E.Section,
High Court, Madras.

3.The Sub Assistant Registrar,
VR Section,
High Court, Madras.

4.The Assistant Registrar,
Legal Cell,
High Court, Madras.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate Sr.21225

+1cc to Mr.F.Terry Chellaraja, Advocate Sr.21700

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.21723

C.M.A. No. 1927 of 2015

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