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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3002 of 2013

and

M.P.No.1 of 2013

Branch Manager,
United India Insurance Company Limited,
Thirupathur. ... Appellant/2nd Respondent

Vs.

1.Kalpana

2.Minor.Mothilal

3.Minor.Vasan

4.Minor.Devanai

5.Minor.Gowthaman

(Minor respondents 2 to 5 are represented by
their mother and next friend Kalpana, 1st
respondent herein)

6.Meenakshi

7.Singaram

8.Anandhan ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.04.2012 made in M.C.O.P.No.161 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court, Thirupathur, Vellore District.

For Appellant : Mr.S.Arunkumar

For RR 1 to 7 : Mr.S.Mohamed Ansar

For R8 : No appearance



J U D G M E N T

The matter is heard through "Video Conferencing".

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2.This Civil Miscellaneous Appeal has been filed against the award dated 30.04.2012 made in M.C.O.P.No.161 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court, Thirupathur, Vellore District.

3.The appellant is the 2nd respondent in M.C.O.P.No.161 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court, Thirupathur, Vellore District. The respondents 1 to 7 filed the said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the death of one Lingesan, who died in the accident that took place on 10.10.2009.

4.According to respondents 1 to 7, on 10.10.2009 at about 06.45 P.M., while the deceased was driving a tractor bearing Registration No.TN 23 BY 6426 near Somalapuram lake bund, the tractor lost its control and capsized on the roadside pit. Due to the said impact, the said Lingesan got stucked under the tractor, sustained fatal injuries and died. Therefore, the respondents 1 to 7 filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation against the 8th respondent and appellant-Insurance Company, being the owner and insurer of the tractor respectively.

5.The 8th respondent being the owner of the tractor remained exparte before the Tribunal.

6.The appellant-Insurance Company, the insurer of the tractor filed counter statement and denied all the averments made by the respondents 1 to 7. According to the appellant-Insurance Company, the accident has occurred only due to the negligence on the part of the deceased. The deceased drove the tractor without any driving license at the time of accident. The deceased was a worker under the 8th respondent and he is not a driver. The 8th respondent-owner of the tractor knowing fully well that the deceased was not having driving license, allowed him to drive the tractor. The respondents 1 to 7 cannot claim that the deceased was the driver of the tractor at the time of accident. Hence, the appellant-Insurance Company is not liable to pay any compensation to the respondents 1 to 7. The respondents 1 to 7 have to prove that they are the legal heirs of the deceased by producing valid documents. The respondents 1 to 7 have to prove the age, avocation and income of the deceased by producing valid documents. The deceased has also contributed to the accident. There is breach of terms and conditions of the



7. Before the Tribunal, the 1st respondent examined herself as P.W.1 and one Arjunan, who is an eyewitness to the accident was examined as P.W.2 and 4 documents were marked as Exs.P1 to P4. The appellant-Insurance Company examined one Kamalakannan, who is the Junior Assistant in Vaniyambadi R.T.O. as R.W.1 and one Kumar, who is working as Senior Assistant Officer in appellant-Insurance Company as R.W.2 and marked 4 documents as Exs.R1 to R4.

9. Against the said award dated 30.04.2012 made in M.C.O.P.No.161 of 2011, the appellant-Insurance Company has come out with the present appeal.

11. Per contra, the learned counsel appearing for respondents 1 to 7 contended that the deceased was an employee of the 8th respondent and as per the instructions of 8th respondent, the



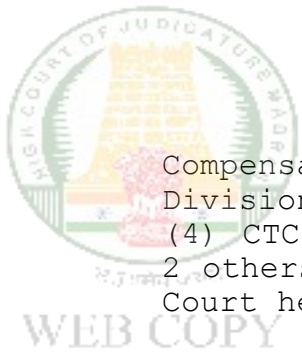
deceased was driving the tractor and accident has occurred during and in the course of the employment. R.W.1, the employee of the R.T.O. has stated that deceased could have obtained license based on his permanent address. The appellant failed to prove that deceased did not possess driving license and 8th respondent-owner of the tractor knowing fully well that deceased did not have driving license, permitted him to drive the tractor. In any event, the appellant is liable to pay the compensation as per the provisions of the Workmen's Compensation Act as the deceased was an employee of the 8th respondent and was driving the tractor and accident has occurred during and in the course of the employment and prayed for dismissal of the appeal.

12. Though the 8th respondent has entered appearance through counsel, when the matter is taken up for hearing, there is no representation on behalf of him.

13. Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the respondents 1 to 7 and perused the entire materials on record.

14. From the materials on record, it is seen that respondents 1 to 7 have filed claim petition under Section 166 of the Motor Vehicles Act, 1988. It is also seen that it is the contention of the respondents 1 to 7 that deceased was a tortfeasor and died due to the injuries sustained by him in the accident. In view of these admitted facts, the claim petition filed under Section 166 of Motor Vehicles Act, is not maintainable. At the same time, it is to be taken note that respondents 1 to 7 claimed that deceased was an employee of the 8th respondent, the owner of the tractor and as per the instructions of 8th respondent, deceased drove the tractor at the time of accident and accident has occurred while he was driving during and in the course of his employment. Ex.P1/F.I.R., was registered based on the complaint given by the 8th respondent, the owner of the tractor. In his complaint, he admitted that the deceased was a worker and he has instructed the deceased to drive the tractor after cleaning the tractor in the nearby lake. This clearly proved that accident has occurred during and in the course of employment while the deceased was driving the tractor as per the instructions of the 8th respondent herein and died due to the fatal injuries in the accident.

15. It is well settled that even though the claimants are not entitled to compensation under Motor Vehicles Act, they are entitled to compensation under Workmen's Compensation Act and Court can grant compensation as per the provisions of Workmen's Compensation Act instead of directing the victim or the legal heirs of the deceased to approach the authority under Workmen's



Compensation Act. This issue was considered and decided by a Division Bench of this Court in the judgment reported in 2002 (4) CTC 469, [Oriental Insurance Co. Ltd. vs. Kaliya Pillai and 2 others], wherein at paragraph No.7, the Division Bench of this Court held as follows:-

"7. As per Section 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. Section 4 provides how the amount of compensation is to be determined. As per sub-section (1) of Section 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.P-4, the owner of the tractor who issued the said certificate though he is a party (first respondent in O.P.No.171/98) has not chosen to examine himself to substantiate the contents of Ex.P-4. However, in the light of Ex.P-6 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.2000/- 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."

15(i).Again this issue was considered by another Division Bench of this Court and referring with approval to the earlier judgment of Division Bench of this Court referred to above, held in the judgment reported in 2015 (2) TNMAC 362 (DB) [M. Anbalagan Vs. K.M. Asalm Basha], wherein the Division Bench of this Court has held as follows:

"6. Relying upon two decisions of the Supreme Court one in Oriental Insurance Company Limited vs. Dyamavva and others, reported in 2013 (1) TN MAC 161(SC) and another in Ramachandra vs.



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Regional Manager (2013(2) TN MAC 304 (SC)), it is contended by Mr.M.Swamikannu, the learned counsel for the appellant that the choice of the forum cannot actually deprive the victim of compensation. Therefore, the learned counsel contended that if a person is entitled to claim compensation in terms of the Employees' Compensation Act, 1923, he cannot be deprived of compensation under the Motor Vehicles Act, 1988.

7. We have carefully considered the above submissions. But we are unable to sustain the said argument in total.

8. It is true that the victim is entitled to choose any one of the two fora, depending upon the benefits that he may get before either of them. But in so far as the claim under the Motor Vehicles Act, 1988 is concerned, the claimant should establish that he was entitled to approach the Court under Section 166 and that he was not himself a tort-feasor. This question played a vital role in distinguishing the claim made under the Motor Vehicles Act from the claim made under the Employees' Compensation Act, 1923.

9. However, as rightly contended by the learned counsel for the second respondent, this Court is empowered to award compensation as payable under the Employees' Compensation Act, 1923. In *Oriental Insurance Company Vs. Kaliya Pillai and another*, reported in 2003-1-L.W.113, a Division Bench of this Court held that the aggrieved or interested person can make a claim for compensation either under the Workmen's Compensation Act or under the Motor Vehicles Act. The only bar is that the claim cannot be made under both the Acts.

10. The Division Bench pointed out that the insurer's liability is to be determined not only with reference to the provisions of the Motor Vehicles Act, but also with reference to the contract of insurance. Therefore, the Division Bench held that the compensation as payable under the Workmen's Compensation Act, could at least be awarded.



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11. A similar view was taken by yet another Division Bench of this Court in the Oriental Insurance Co., Ltd., vs. Krishnan and others, reported in 2003-2-L.W.73. Therefore, even if the appellant is not entitled to make a claim, as a third party, under Section 166 of the Motor Vehicles Act, he can at least make a claim under the Employees' Compensation Act, 1923.

12. Coming to the quantum of compensation that should be awarded, at least under the Employees Compensation Act, 1923, it is seen from the pleadings and the evidence on record that the appellant was aged 38 years on the date of the accident. Therefore, the relevant factor under Schedule-IV to the Employees' Compensation Act, 1923, is 189.56."

16. In view of the above well settled principles of law, the respondents 1 to 7 are entitled to compensation as per the provisions of Workmen's Compensation Act, 1923.

17. The appellant-Insurance Company examined R.W.1, an official from Vaniyambadi R.T.O. who deposed that from 2008 to 2012, no license was issued to the deceased from his Office. R.W.1 also stated that by giving permanent address, it is possible for the deceased to have obtained driving license from any other Regional Transport Office. This evidence of R.W.1 does not advance the case of the appellant that deceased did not possess driving license at the time of accident.

18. The Hon'ble Apex Court in the judgment dated 23.09.2020 made in Civil Appeal Nos.7220 & 7221 of 2011, [Beli Ram Vs. Rajinder Kumar], held that Insurance Company must not only prove the claimant or the deceased did not possess driving license, but also must allege and prove that owner of the vehicle allowed a person to drive the vehicle by knowing fully well that the said person did not possess valid driving license to drive the vehicle. The appellant-Insurance Company failed to prove that deceased did not possess driving license and 8th respondent knowing this fact, permitted the deceased to drive the tractor. In view of the above materials, the finding of the Tribunal that appellant proved that deceased did not possess driving license at the time of accident is not based on any acceptable evidence.



19. As far as quantum of compensation is concerned, the relevant Section which relates to the compensation is Section 4 (1) of the Workmen's Compensation Act, 1923. Section 4(1)(a) of Act deals with compensation payable for the death of the employee and the said Section reads as follows:

"Section 4 - Amount of compensation:- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a) Where death results from the injury	an amount equal to [fifty percent] of the monthly wages of the deceased [employee] multiplied by the relevant factor;
	or
	an amount of [one lakh and twenty thousand rupees], whichever is more."

As per the said Section, 50% of the monthly wages has to be taken into account and multiplier according to the age of the deceased as mentioned in Schedule 4 of the Act has to be applied. The deceased was aged 30 years and the relevant factor for 30 years is 207.98. Minimum sum of Rs.1,20,000/- has to be paid to the claimants. The respondents 1 to 7 claimed that deceased was earning a sum of Rs.3,250/- per month. The Tribunal fixed a sum of Rs.3,000/- per month as notional income of the deceased. The compensation payable as per Workmen's Compensation Act is Rs.3,11,970/- (Rs.3,000/- X 207.98 X 50%). As per Section 4(1)(a) of the Employee's Compensation Act, 1923, the respondents 1 to 7 are not entitled to any other amounts which are payable as compensation under Motor Vehicles Act except medical expenses. In the present case, the respondents 1 to 7 have not filed any documents with regard to medical expenses. Therefore, the respondents 1 to 7 are not entitled to any amount towards medical expenses. The amounts awarded by the Tribunal towards loss of love and affection and funeral expenses are liable to be set aside and they are hereby set aside. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	5,18,400/-	3,11,970/-	Reduced
2.	Funeral expenses	10,000/-	-	Set aside
3.	Loss of love and affection	50,000/-	-	Set aside
	Total	Rs.5,78,400/-	Rs.3,11,970/-	Reduced by Rs.2,66,430/-

20. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,78,400/- is hereby modified to Rs.3,11,970/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.161 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Fast Track Court, Thirupathur, Vellore District, at the first instance and recover the same from the 8th respondent-owner of the tractor. On such deposit, the 1st respondent is permitted to withdraw her share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share of the minor respondents 2 to 5 are directed to be deposited in any one of the Nationalized Banks, till the minor respondents 2 to 5 attain majority. On such deposit, the 1st respondent, being the mother of the minor respondents 2 to 5 is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 to 5. The appeal is dismissed as against respondents 6 and 7. The appellant-Insurance Company is permitted to withdraw the excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.161 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional District Court,



Fast Track Court, Thirupathur, Vellore District, if the entire amount has already been deposited by them. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

krk
To

The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court,
Thirupathur,
Vellore District.

Copy to

The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.S.Arun Kumar, Advocate Sr.34608

C.M.A.No.3002 of 2013

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