

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.116 of 2014
and M.P.No.1 of 2014

The Branch Manager,
M/s.National Insurance Co. Ltd.,
N.I.C. Buildings,
No.8, India Exchange Place,
Ground Floor, Kolkatta - 700 001,
West Bengal District. ...Appellant/2nd Respondent

vs.

1.D.Jagan1st Respondent/Claimant

2.The Managing Director,
Vijayanand Roadlines Ltd.,
Corporate Office, Giriraj Annexe,
Circuit House Road, Hubli,
Dhanwad, Karnataka State - 580 029
...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MACT.O.P.No.600 of 2009 dated 12.04.2013 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Krishnagiri.

For Appellant : Mr.E.Rajadurai
for M/s.N.Vijayaraghavan

For Respondents : R1 - died steps due
Mr.L.Rajasekar for R2

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Appellant Insurance Company challenging the Award dated 12.04.2013 passed by the Motor Accident Claims Tribunal, Principal Subordinate Judge, Krishnagiri, in MACT.O.P.No.600 of 2009.

2.Heard Mr.E.Rajadurai, learned counsel for the Appellant and Mr.L.Rajasekar, learned counsel for the second respondent.

3.The Tribunal under the impugned Award has directed the Appellant Insurance Company to pay the first respondent/claimant a compensation of Rs.5,08,363/- together with interest and cost for the injuries sustained by him on 09.11.2006 as a result of an accident caused by a vehicle owned by the second respondent and insured with the Appellant.

4.The details of the compensation awarded by the Tribunal under the impugned Award are as follows:

Future loss of earning	-	Rs.4,59,000/-
Pain and suffering	-	Rs. 20,000/-
Transportation, Nutrition and attender	-	Rs. 15,000/-
Medical bills	-	Rs. 4,363/-
Future treatment through out life time	-	Rs. 10,000/-

Total		Rs.5,08,363/-

5.The Appellant Insurance Company has preferred this appeal on the following grounds:

(a)The Tribunal has grossly erred in fastening liability on the insurer in a case where the claimant who was the driver of the insured vehicle at the time of the accident was himself was at fault.

(b)The Tribunal ought to have seen that in any case the liability of the Appellant Insurance shall be as per 2004 ACJ 1790 (Mad DB) since the claimant was workmen driver.

(c)The Tribunal failed to see that if at all the liability of the insurer shall not exceed such amount as per Workmen's Compensation Act, 1923 alone.

(d)The ultimate compensation of Rs.5,08,363/- awarded by the Tribunal under various heads is unsustainable.

6.A Division Bench of this Court in the case of Oriental Insurance Co. Ltd. vs. Krishnan Thayammal reported in 2004 ACJ 1790 had an occasion to consider the same issue which is now raised by the Appellant Insurance Company in this appeal. Relevant paragraphs of the aforesaid judgment is extracted hereunder:

"5. Counsel also invited our attention to a judgment of this Court in the case of Oriental Insurance Co. Ltd. vs. Kalliya Pillai and others, 2002 (4) CTC 469, where the Court took the view that even the liability under Workmen's Compensation Act, 1923 may be determined by this Court having regard to the extent of the coverage under the policy after it was found that the claim made before the Tribunal under the Motor Vehicles Act is not maintainable. The Insurer appellant does not dispute the fact that the policy covers the liability of the insured to his employee under the Workmen's Compensation Act. Under Section

3 of that Act negligence of the workmen who dies in an accident arising out of and in the course of his employment does not absolve the employer of the obligation to pay compensation in accordance with the provisions of that Act.

6. Having regard to this position, we deem it just to hold that the Insurer is liable to pay compensation payable in accordance with the provisions of the Workmen's Compensation Act. If the amount of such compensation is higher than the amount of the 'No fault liability' under Section 140 of the Motor Vehicles Act, Insurer will not be liable to make the payment under Section 140(5) of the Motor Vehicles Act. If the amount of the no fault liability is higher, then no amount need be paid under the Workmen's Compensation Act, as the claimant is entitled to the higher of the two amounts, but not both. The order under appeal which directs payment of Rs.2.00 lakhs to the parents of the deceased on the reasoning that though the negligent employee could not have claimed compensation, nevertheless his parents can, is set aside."

7. In the case on hand, the Appellant Insurance Company has not disputed that the policy (Ex.A4) covers the liability of the insured to his employee under the Workmen's Compensation Act.

8. Admittedly, the first respondent/claimant was a driver employed by the owner of the vehicle (insured). Under Section 3 of the Workmen's Compensation Act, if personal injury is caused to [an employee] by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of that Act.

9. Under the impugned Award, it is an admitted fact that the compensation of Rs.5,08,363/- awarded by the Tribunal is within the limits prescribed under the Workmen's Compensation Act. The Appellant themselves have pleaded in their grounds of appeal that they are not liable to compensate the claimant in case if the compensation awarded by the Tribunal is within the limits prescribed under the Workmen's Compensation Act, as per the decision of the Division Bench of this Court referred to supra. Since the compensation awarded by the Tribunal under the impugned Award does not exceed the prescribed limit as per the provisions of the Workmen's Compensation Act, this Court is of the considered view that there is no merit in this appeal.

10. Accordingly, the appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit the amount awarded by the Tribunal, after deducting the amount already deposited if any, together with interest at the rate of 6% p.a. from the date of the claim till the date of realization to the credit of MACT.O.P.No.600 of 2009, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Judge, Krishnagiri, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the Award amount along with accrued interest lying to the credit of MACT.O.P.No.600 of 2009 to the bank account of first respondent/claimant, through RTGS, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

pam

To

1. The Motor Accidents Claims Tribunal,
Principal Subordinate Judge, Krishnagiri.

Copy to:

The Section Officer,
Vernacular Section,
Madras High Court.

C.M.A.No.116 of 2014

VBA(CO)
CB(01/12/2020)

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