



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1011 of 2013

and

M.P.No.1 of 2013

The Branch Manager
Royal Sundaram Alliance
Insurance Company Limited
No.127, II floor
Natesan Towers, Natesan nagar
Ellapillaichavady
Pondicherry.

.. 2nd Respondent/Appellant/
2nd Respondent

Vs.

1.K.Vadivelu

2.R.Udayakumar
(R2 set exparte before the Tribunal)

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.08.2012 made in M.A.C.T.O.P.No.368 of 2011 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tindivanam.

For Appellant : Mrs.R.Sreevidhya

For R1 : Mr.M.R.Thangavel

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 31.08.2012 made in M.A.C.T.O.P.No.368 of 2011 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tindivanam.

2.The appellant is 2nd respondent/Insurance Company in M.A.C.T.O.P.No.368 of 2011 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tindivanam. The 1st respondent



come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in fastening liability on the appellant holding that the 1st respondent had hit the stationed lorry parked due to the tyre burst. The 1st respondent was the tort-feasor and therefore, the claim petition filed by him is not maintainable and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent was working as a driver under the 2nd respondent and the accident has occurred, during the course of his employment. The lorry belonging to the 2nd respondent was insured with the appellant/Insurance Company at the time of accident and hence, the appellant is liable to pay compensation. The Tribunal has rightly held that the 2nd respondent and appellant, owner and insurer of the lorry are liable to pay compensation to the 1st respondent and prayed for dismissal of the appeal.

11.The 2nd respondent remained exparte before the Tribunal and hence, notice to the 2nd respondent is dispensed with.

12.Heard the learned counsel for the appellant/Insurance Company, who appeared before this Court physically as well as the learned counsel appearing for the 1st respondent through Video-conferencing/Hybrid mode and perused the entire materials available on record.

13.From the materials on record, it is seen that 1st respondent was driver of the lorry belonging to the 2nd respondent. On the date of accident, i.e. on 02.05.2011, while the 1st respondent was driving the said lorry, he dashed on the back side of the stationed lorry and caused the accident. In the accident, he sustained injuries all over the body including fracture. He filed claim petition under Section 163A of the Motor Vehicles Act claiming compensation for the injuries sustained by him against the 2nd respondent, who is his employer and appellant, insurer of lorry. The Tribunal considering the evidence let in by the 1st respondent as P.W.1 and Ex.P1/F.I.R., held that accident has occurred due to rash and negligent driving by the 1st respondent. From this finding of the Tribunal, it is seen that 1st respondent is the tort-feasor. Now it is well settled that a tort-feasor is not entitled to maintain claim petition even under Section 163A of the Motor Vehicles Act. At the same time, it is to be taken note that 1st



respondent has claimed that he is the driver of the lorry working under 2nd respondent and while in the course of his employment, the accident has occurred. The 2nd respondent as well as appellant did not deny the said claim of 1st respondent. In view of the fact that 1st respondent being the employee of 2nd respondent and accident has occurred during course of his employment, he is entitled to compensation under Workmen's Compensation Act and both the 2nd respondent as well as appellant are liable to pay compensation as per the provisions of Workmen's Compensation Act.

14. The issue whether an employee of the owner of the vehicle or in case of death, the legal heirs of the deceased/employee can maintain the claim under the Motor Vehicles Act or only course available in such situation is only to approach the authority under Workmen's Compensation Act, came up for consideration before the Division Bench of this Court. This Court considering the provisions of Motor Vehicles Act and contract of injured held that a claim petition under Motor Vehicles Act as well as Workmen's Compensation Act are maintainable. The claimants must choose either one of the legal forums and they cannot maintain the same application under both the Acts. The Division Bench of this Court, further held that even if the claimants are not entitled to compensation under the provisions of Motor Vehicles Act, they are entitled to compensation covered under the insurance policy, which is the contract between the owner of the vehicle and insurer. In paragraph 6 of the judgment reported in 2002 (4) CTC 469 in the Oriental Insurance Co.Ltd. vs. Kaliya Pillai and 2 others, it is held as follows:

"6. . . . However, the insurer's liability is to be determined not only with reference to the provisions under the Motor Vehicles Act, but also with reference to the contract of insurance which would extend to the liability of the insured under the Workmen's Compensation Act. 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



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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."

15. This judgment was followed by another Division Bench of this Court in the judgment reported in 2015 (2) TNMAC 362 (DB) in M.Anbalagan vs. K.M.Asalm Basha, in paragraph 6 to 12 it is 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. 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



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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.

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. The ratio in the above two judgments is squarely applicable to the facts of the present case. The 1st respondent is entitled to compensation as per the provisions of the Workmen's Compensation Act, 1923. The 1st respondent is claiming that he was earning Rs.15,000/- per month at the time of accident. Initially as per Workmen's Compensation Act, the maximum salary that can be taken into account for awarding compensation is only Rs.4,000/- per month. Subsequently, as per G.O.No.1047, Ministry of Labour and Employment Notification dated 31.05.2010, the limit is enhanced to Rs.8,000/- per month. The accident has occurred on 02.05.2011, i.e., after the amendment. Therefore, a sum of Rs.8,000/- per month is fixed as notional income of the 1st respondent. The 1st respondent was aged 35 years at the time of accident. As per Schedule IV of the



Employees Compensation Act, 1923, for 35 years, the relevant factor applicable is 197.06. In the accident, the 1st respondent suffered fracture of both bones, underwent surgery and rod was implanted. Due to the injuries, the 1st respondent finds it difficult to walk, climb staircase and squat and he is limping. To prove the same, the 1st respondent marked the discharge summaries and medical bills as Exs.P3 to P6 respectively. P.W.2/Doctor after examining the 1st respondent, assessed the disability of the 1st respondent as 53%. The appellant/Insurance Company has not let in any evidence to disprove the disability certificate issued by P.W.2/Doctor and evidence of P.W.2/Doctor. As per Section 4(1) of the said Act, the salary could be taken into account for calculating compensation and in case of permanent total disability resulting from the injury, 60% of salary received by him has to be taken for calculation. Hence, applying the factor mentioned in Schedule IV of the Employees Compensation Act and taking into consideration 60% of the salary fixed by this Court, the amount awarded by the Tribunal towards disability comes to Rs.5,01,320.64 (Rs.8,000/- X 197.06. X 60/100 X 53/100). The Tribunal has granted only a sum of Rs.2,98,218/- as total compensation to the 1st respondent. In view of the same, the award of the Tribunal is not interfered with.

17. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.2,98,218/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. The 2nd respondent and appellant/Insurance Company are directed to deposit the entire award amount 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. On such deposit, the 1st respondent is permitted to withdraw the entire amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Kj



To

1.The Principal Subordinate Judge
(Motor Accident Claims Tribunal)
Tindivanam.

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2.The Section Officer
V.R.Section
High Court, Chennai.

+lcc to Mr.M.R.Thangavel, Advocate SR.No.68754

+lcc to Mr.R.Sreevidhya, Advocate SR.No.68933

C.M.A.No.1011 of 2013
and
M.P.No.1 of 2013

VG II(CO)
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