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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.3694 OF 2019

AND

C.M.P.NO.21187 OF 2019

M/s.Oriental Insurance Company Limited,
The Divisional Office,
New Bus Stand, Erode.

.. Appellant/
2nd Respondent

Vs.

1.Hasina Banu
2.Ziaulla

.. Respondents 1 & 2/
Petitioners

3.Najeebulla Khan

..3rd Respondent/1st Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.11.2017 made in M.C.O.P.No.400 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sathyamangalam.

For Appellant : Mrs.C.Harini
for Mr.N.Vijayaraghavan

For RR 1 & 2 : Mr.R.Nalliyappan

For R3 : No appearance

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed challenging the quantum of compensation granted by the Tribunal in the award dated 22.11.2017 made in M.C.O.P.No.400 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sathyamangalam.



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3.The appellant is the 2nd respondent in M.C.O.P.No.400 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sathyamangalam. The respondents 1 & 2 filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of their son viz., Fayaz Ulla Khan @ Fayaz, who died in the accident that took place on 21.07.2014.

4.According to respondents 1 & 2, on 21.07.2014 at about 06.30 P.M., while their son Fayaz Ulla Khan @ Fayaz was driving the Ashok Leyland Tusker Lorry bearing Registration No.KA 01 B 6385 on the Bannari - Sathyamangalam Main Road from West to East along with one Haroon Shariff as Cleaner, while turning the lorry near Vadavalli Murugan Temple, the lorry lost its control and capsized. Due to the said impact, the driver of the lorry caught hold under the lorry and became unconscious and the cleaner also sustained injuries. Immediately after the accident, both the driver and cleaner of the lorry were admitted at Government Hospital, Sathyamangalam. The Duty Doctors examined the said Fayaz Ulla Khan @ Fayaz and reported that he was brought dead. Therefore, the respondents 1 & 2, being the parents of the said Fayaz Ulla Khan @ Fayaz filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of their son against the 3rd respondent and appellant-Insurance Company, being the owner and insurer of the lorry respectively.

5.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the lorry owned by 3rd respondent and directed the 3rd respondent as well as appellant to pay a sum of Rs.19,59,000/- as compensation to the respondents 1 & 2.

6.Questioning the quantum of compensation granted by the Tribunal in the award dated 22.11.2017 made in M.C.O.P.No.400 of 2014, the appellant has come out with the present appeal.

7.The learned counsel appearing for the appellant contended that the Tribunal erroneously awarded huge amount of compensation which is not in consonance with the facts and circumstances of the case. The Tribunal having found that deceased was workman under Workman Compensation Act, ought not to have granted excess amount payable under Workmen Compensation Act contrary to the judgment of the Division Bench judgment of this Court reported in 2004 ACJ 1780 (Mad) (DB), [United India Insurance Company Limited Vs. Muthulakshmi and others]. The huge amount awarded by the Tribunal are unsustainable and prayed for setting aside the award passed by the Tribunal.



8. Per contra, the learned counsel appearing for the respondents 1 & 2 contended that the Tribunal considering the defense taken by the appellant that respondents 1 & 2 are entitled to compensation only as per Workmen Compensation Act, following the judgment of the Hon'ble Apex Court reported in 2013 (1) TNMAC 161 (SC), [Oriental Insurance Company Limited Vs. Dyamavva and others], relied on by the respondents 1 & 2, held that respondents 1 & 2 are entitled to compensation either by Workmen Compensation Act or as per Motor Vehicles Act. The Tribunal having held so, considering the age and avocation of the deceased, awarded a total sum of Rs.19,59,000/- as compensation to the respondents 1 & 2, which is not excessive and prayed for dismissal of the appeal.

9. Though notice has been served on the 3rd respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

10. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 & 2 and perused the entire materials on record.

11. The main contention of the learned counsel appearing for the appellant is that the Tribunal awarded more than the amount payable under Workmen Compensation Act. The Tribunal having held that respondents 1 & 2 are entitled to compensation only as per Workmen Compensation Act, erroneously awarded excessive amount under Motor Vehicles Act. From the materials on record, it is seen that the respondents 1 & 2 claimed that the deceased was aged 24 working as Driver under 3rd respondent and was earning a sum of Rs.12,000/- per month. The Tribunal accepted their case and fixed the monthly income of the deceased at Rs.12,000/-, deducted 50% towards personal expenses, applied multiplier '18' by following the provisions of Motor Vehicles Act and granted compensation. Though the respondents 1 & 2 filed claim petition under Motor Vehicles Act, the Tribunal held that respondents 1 & 2 are entitled to compensation only under Workmen Compensation Act. In view of the same, the respondents 1 & 2 are not entitled to compensation under Motor Vehicles Act and they are entitled to compensation only as per the provisions of Workmen Compensation Act.

12. As far as quantum of compensation is concerned, the relevant Section which relates with 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:

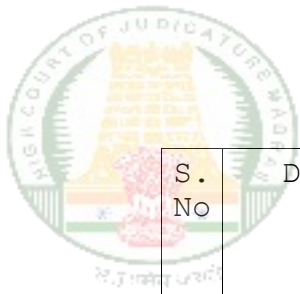


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"Section 4 - Amount of compensation:- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(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 24 years and the relevant factor for 24 years is 218.47. Minimum sum of Rs.1,20,000/- has to be paid to the claimants. The respondents 1 & 2 claimed that deceased was earning a sum of Rs.12,000/- per month at the time of accident by working as Driver under 3rd respondent. The respondents 1 & 2 have not filed any document to prove the avocation and income of the deceased. In the absence of any document with regard to avocation and income of the deceased, the Tribunal considering the year of accident and nature of work done by the deceased, fixed a sum of Rs.12,000/- per month as notional income of the deceased. As per Minimum Wages Act, the respondents 1 & 2 are entitled to compensation only by fixing a sum of Rs.8,000/- per month as notional income of the deceased. Thus, the compensation payable as per Workmen's Compensation Act is Rs.8,73,880/- (Rs.8,000/- X 218.47 X 50/100). As per Section 4(1)(a) of the Employee's Compensation Act, 1923, the respondents 1 & 2 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 & 2 have not filed any documents with regard to medical expenses. Therefore, the respondents 1 & 2 are not entitled to any amount towards medical expenses. The amounts awarded by the Tribunal under other heads are liable to be set aside and they are hereby set aside. Thus, the compensation awarded by the Tribunal is modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	17,28,000/-	8,73,880/-	Reduced
2.	Loss of love and affection	2,00,000/-	-	Set aside
3.	Transportation	6,000/-	-	Set aside
4.	Funeral expenses	25,000/-	-	Set aside
	Total	Rs.19,59,000/-	Rs.8,73,880/-	Reduced by Rs.10,85,120/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.19,59,000/- is hereby reduced to Rs.8,73,880/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 3rd respondent as well as appellant-Insurance Company are 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.400 of 2014 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sathyamangalam. On such deposit, the respondents 1 & 2 are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company as well as 3rd respondent are permitted to withdraw the award amount lying in the credit of M.C.O.P.No.400 of 2014, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sathyamangalam.

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

C.M.A.No.3694 of 2019

VBM(CO)
CS/23/09/2021