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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.07.2021	Delivered on: 06.08.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.2094 of 2014
and
M.P.No.1 of 2014

The Branch Manager,
Oriental Insurance Company Limited,
D.O.10, 2nd floor,
Old No.36, Uthamar Gandhi Salai,
Chennai - 600 034.

.. Appellant/ Respondent 2

Vs.

1.Sarala
2.Udhayakumar
3.Usharani
4.K.P.Samy
5.M.Mani

.. 1 to 3 Respondent / Claimants
.. Respondent / Respondent 1
.. Respondent / Respondent 3

(R4 & R5 remained exparte before the Tribunal.
Hence, notice to R4 & R5 dispensed with)

6.The Manager,
Royal Sundaram Alliance Insurance Company Limited,
No.45 & 46, Whites Road,
Chennai - 600 014.

.. Respondent / Respondent 4

(R6 given up)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.06.2012 made in M.C.O.P.No.94 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi.

For Appellant : Mr.K.Vinod
for Mr.S.Manohar

For RR 1 to 3 : Mr.R.Chandra Mohan



JUDGMENT

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

This Civil Miscellaneous Appeal has been filed to set aside the award dated 06.06.2012 made in M.C.O.P.No.94 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi.

2.The appellant is the 2nd respondent in M.C.O.P.No.94 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi. The respondents 1 to 3 filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Chandrasekaran, who died in the accident that took place on 21.01.2009.

3.According to respondents 1 to 3, on 21.01.2009 at about 21.10 hours, the said Chandrasekaran was driving the lorry bearing Registration No.TN 20 AB 1181 belonging to 4th respondent in the Natrampalli Bye Pass Road in Krishnagiri - Vaniyambadi. While he was driving the lorry opposite to Samanna Gounder House, at that time another lorry bearing Registration No.TN 25 W 0310 belonging to 5th respondent and insured with 6th respondent was parked in the highway road without any thorns, stones, fire, leaves or trees placed around the parked vehicle to show that the said lorry is parked and also there was no parking lights in the lorry. While the said Chandrasekaran was driving the lorry belonging to 4th respondent slowly and cautiously, he has not anticipated that the lorry belonging to 5th respondent is parked and he applied sudden brakes. In spite of best efforts taken by the said Chandrasekaran, the lorry driven by him embraced the rear side of the parked lorry and thus, the accident occurred. In the accident, the said Chandrasekaran sustained fatal injuries and immediately after the accident, he was taken to Government Hospital, Vaniyambadi. The Duty Doctor examined the said Chandrasekaran and informed that he died on the way itself. Therefore, the respondents 1 to 3, being the wife, son and daughter of the said Chandrasekaran filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of the said Chandrasekaran against the respondents 4 to 6 and appellant.

4.The respondents 4 & 5, being the owners of the lorry bearing Registration No.TN 20 AB 1181 & TN 25 W 0310 respectively remained exparte before the Tribunal.



5.The appellant-Insurance Company, being the insurer of the lorry belonging to the 4th respondent filed counter statement and denied all the averments made by the respondents 1 to 3. According to the appellant, the accident has occurred only due to the negligence on the part of the driver of the lorry bearing Registration No.TN 25 W 0310 belonging to 5th respondent and insured with 6th respondent as he only parked the lorry in the highway without any parking lights and hence, the appellant is not liable to pay any compensation to the respondents 1 to 3. The owner of the lorry/4th respondent failed to contest the claim and the provisions of Section 170 of the Motor Vehicles Act and the appellant came to know about the occurrence only after receiving the notice from the Court. The appellant denied the age, avocation and income of the deceased. The quantum of compensation claimed by the respondents 1 to 3 is highly excessive and prayed for dismissal of the claim petition as against the appellant.

6.The 6th respondent-Royal Sundaram Alliance Insurance Company, being the insurer of the lorry belonging to 5th respondent filed separate counter statement and denied the manner of accident as alleged by the respondents 1 to 3. According to 6th respondent, the accident has occurred only due to the negligence on the part of the deceased Chandrasekaran as he only drove the lorry bearing Registration No.TN 20 AB 1181 belonging to 4th respondent without following the road traffic rules and dashed on the lorry bearing Registration No.TN 25 W 0310 belonging to 5th respondent and caused the accident. In any event, the quantum of compensation claimed by the respondents 1 to 3 is highly excessive and prayed for dismissal of the claim petition as against the 6th respondent.

7.Before the Tribunal, the 1st respondent examined herself as P.W.1, one Senthilkumar, eyewitness to the accident was examined as P.W.2 and 8 documents were marked as Exs.P1 to P8. On behalf of the appellant, one Karikalan, Assistant Manager was examined as R.W.1 and on behalf of the 6th respondent, one Jagadeesan, Senior Official was examined as R.W.2 and three documents were marked as Exs.R1 to R3.

8.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 belonging to 4th respondent and directed the appellant-Insurance Company to pay a



sum of Rs.5,39,000/- as compensation to the respondents 1 to 3.

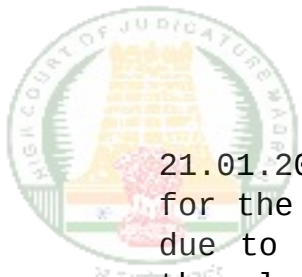
9.To set aside the said award dated 06.06.2012 made in M.C.O.P.No.94 of 2011, the appellant has come out with the present appeal.

10.The learned counsel appearing for the appellant contended that the deceased was a tortfeasor and hence, the claim made by the legal heirs of the deceased is not maintainable. The Tribunal failed to consider that a tortfeasor or his legal representatives cannot maintain a claim and erroneously directed the appellant, being the insurer to pay the compensation to the claimants. The Tribunal failed to note that if at all the legal representatives are entitled to any claim, they are entitled only under the Employees Compensation Act before the Commissioner for Employees Compensation and not under Section 166 of the Motor Vehicles Act. The Tribunal ought to have seen that the liability of the appellant under Employees Compensation Act is only Rs.2,80,760/- and the Tribunal erroneously awarded huge amount of Rs.5,39,000/- as compensation to the claimants and prayed for setting aside the award passed by the Tribunal.

11.Per contra, the learned counsel appearing for the respondents 1 to 3 contended that the deceased Chandrasekaran died in the road traffic accident involving two lorries belonging to 4th respondent & 5th respondent and the Tribunal considering the same, has rightly awarded compensation under the Motor Vehicles Act. At the time of accident, the deceased was aged 54 years, working as Driver under the 4th respondent and was earning a sum of Rs.7,500/- per month. But, the Tribunal has fixed a meagre sum of Rs.5,000/- per month as notional income of the deceased and awarded compensation. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents 1 to 3 and perused the entire materials on record.

13.From the materials on record, it is seen that respondents 1 to 3 have filed claim petition under Section 166 of the Motor Vehicles Act, 1988 for the death of one Chandrasekaran, who died in the road traffic accident that occurred on



21.01.2009. The main contention of the learned counsel appearing for the appellant is that the deceased was a tortfeasor and died due to the injuries sustained by him in the accident and hence, the claim petition filed under Section 166 of Motor Vehicles Act by the respondents 1 to 3/claimants, who are the legal representatives of the deceased is not maintainable. At the same time, it is to be taken note that respondents 1 to 3 claimed that deceased was an employee under the 4th respondent, the owner of the lorry bearing Registration No.TN 20 AB 1181 and the accident has occurred during and in the course of his employment. Ex.P1/F.I.R., was registered based on the complaint given by one Venkateswararao, who is working as Mechanic under the 4th respondent and also traveled along with the deceased in the 4th respondent's lorry at the time of accident. Further, it is evident from the claim petition filed by the respondents 1 to 3/claimants that the deceased was an employee under the 4th respondent and there is no contra evidence to disprove the same. This clearly proves that accident has occurred during and in the course of employment while the deceased was driving the lorry belonging to 4th respondent and died due to the fatal injuries sustained in the accident.

14.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



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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."

14(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. 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.



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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."

15. In view of the above well settled principles of law, the respondents 1 to 3 are entitled to compensation as per the provisions of Workmen's Compensation Act, 1923.

16. 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:

"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."

17. As per the said Section, 50% of the monthly wages has to be taken into account and relevant factor according to the age



of the deceased as mentioned in Schedule 4 of the Act has to be applied. The deceased was aged 54 years at the time of accident and the relevant factor for 54 years is 139.13. Minimum sum of Rs.1,20,000/- has to be paid to the claimants. The respondents 1 to 3 claimed that deceased was earning a sum of Rs.7,500/- per month. To prove the avocation and income of the deceased, the respondents 1 to 3 have marked the driving license of the deceased as Ex.P5. The respondents 1 to 3 have not filed any salary certificate or wage register to prove the avocation and income of the deceased. In the absence of any documentary proof with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.5,000/- per month as notional income of the deceased and the same is not meagre. Thus, the compensation payable as per Workmen's Compensation Act is Rs.3,47,825/- (Rs.5,000/- X 139.13 X 50%). As per Section 4(1)(a) of the Employee's Compensation Act, 1923, the respondents 1 to 3 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 3 have not filed any documents with regard to medical expenses. Therefore, the respondents 1 to 3 are not entitled to any amount towards medical expenses. The amounts awarded by the Tribunal towards loss of consortium to 1st respondent, loss of love and affection, funeral expenses and transportation are liable to be set aside and hence, 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	4,40,000/-	3,47,825/-	Reduced
2.	Loss of consortium to 1 st respondent	30,000/-	-	Set aside
3.	Loss of love and affection	60,000/-	-	Set aside
4.	Funeral expenses	5,000/-	-	Set aside
5.	Transportation	4,000/-	-	Set aside
	Total	Rs.5,39,000/-	Rs.3,47,825/-	Reduced by Rs.1,91,175/-



18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,39,000/- is hereby reduced to Rs.3,47,825/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Oriental Insurance Company Limited 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.94 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi. On such deposit, the respondents 1 to 3 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 is permitted to withdraw the award amount lying in the credit of M.C.O.P.No.94 of 2011, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.Elveera Ravindran, Advocate, S.R.No.38768

C.M.A.No.2094 of 2014

LN(CO)
SB(09/11/2021)