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C.M.A.No.1074 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1074 of 2018

1.M.Chakkaravarthi

2.C.Rajathi

.. Appellants

Versus

1.Arunachala Logistics Pvt., Ltd.,
No.8/3/961D, IV Floor,
SBI Building, Sri Nagar Colony,
Hyderabad.

2.The New India Assurance Co. Ltd.,
VI Floor, F-Block Surya Towers,
Secunderabad, Andhra Pradesh.

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree of the Motor Accidents Claims Tribunal cum Additional District Judge, Krishnagiri, made in M.C.O.P.No.853 of 2013 dated 14.03.2016.

For Appellants : Mr.M.Selvam

For Respondents

For R1 : Mr.K.Vinod

For R2 : Left



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JUDGMENT

The Civil Miscellaneous Appeal has been filed against the Judgment and Decree of the Motor Accident Claims Tribunal cum Additional District Judge, Krishnagiri, made in M.C.O.P.No.853 of 2013 dated 14.03.2016.

2. The manner of the accident, factum of the accident, rash and negligence on the part of the driver of the offending vehicle are not in dispute. Hence, the finding rendered by the Tribunal in this regard is hereby confirmed.

3. It is the case of the appellants that on 22.06.2013 at about 10.50 hours when Karthick (since deceased) was proceeding a lorry Regn.No.AP-07-TA-1628 belonging to the 1st respondent herein in Sandhur to Velampatty road near Velampatty Government Higher Secondary School, lost his control and dashed against the house of the Srinivasan. Hence the accident occurred, due to which, the said Karthick died on the spot. Hence, the legal heirs of the deceased namely his wife and his son filed claim petition before the Tribunal seeking compensation of Rs.25,00,000/-.



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4. The appellants are the claimants seeking to challenge the award passed by the Tribunal on the ground of quantum. The 1st respondent is the owner of the vehicle and the 2nd respondent is the insurer of the 1st respondent's vehicle.

5. During the trial on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to P6 were marked and on the side of the respondents no one was examined and no document was marked.

6. After going through both oral and documentary evidence, the Tribunal had come to the conclusion that the alleged accident occurred due to the rash and negligent driving of the driver of the 1st respondent's offending vehicle and hence, fixed the liability 50:50 ratio viz., 50% against the deceased driver of the 1st respondent's vehicle and 50% against the Insurance Company, 2nd respondent herein and awarded compensation as follows;-

<i>Heads</i>	<i>Compensation</i>
Loss of income	Rs.6,48,000/- (3,24,000/- each)
Transportation	Rs.10,000/-
Funeral expenses	Rs.20,000/-
Loss of love and affection	Rs.1,00,000/- (50,000 + 50,000 each)
Total	Rs.7,78,000/- (after deducting 50% of liability, the compensation awarded by the Tribunal is at Rs.3,89,000/-)



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The said 50% of award amount i.e., Rs.3,89,000/- was directed to be paid by two parts i.e., Rs.2,02,000/- to be paid to the son of the deceased and Rs.1,87,000/- to be paid to the wife of the deceased by the 2nd respondent/Insurance Company. Aggrieved against the compensation awarded by the Tribunal by assessing 50% of liability, the appellant/claimants have preferred this present appeal.

7. The learned counsel for the appellants submitted that the Tribunal erred in awarding Rs.3,89,000/- as compensation in respect of the fatal sustained by the 1st petitioner's son. The Tribunal ought to have awarded the claim of Rs.25,00,000/- and the Tribunal failed to consider and appreciate the evidence of P.W.1 and P.W.2. The Tribunal erred in not considering the future prospects of the deceased. The Tribunal erred in concluding that the deceased income Rs.25,000/- per month when a deceased was working as Driver. He further submitted that the accident occurred during the course of employment. Therefore, the award may be passed under the Workmen's Compensation Act.

8. In support of his contention, the learned counsel for the appellant relied upon the judgments of this Court reported in **2004 ACJ 1970** in the case of



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Oriental Insurance Co.Ltd., Vs. Krishnan and Others.

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9. The learned counsel for the 1st respondent submitted that the deceased himself caused this accident and therefore, he cannot claim any compensation under Workmen's Compensation Act. Hence, he prays to dismiss the appeal.

10. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent and perused the materials available on record.

11. In this regard, it is relevant to rely upon the judgment of this Court reported in **2004 ACJ 1790** in the case of ***Oriental Insurance Co. Ltd., Vs. Krishnan and Others***, wherein this Court has held as follows:

“ Counsel also invited out attention to a judgment of this Court in the case of Oriental Insurance Co. Ltd. Vs. Kaliya Pillai, 2003 ACJ 1021 (Madras), where the Court took the view that even the liability under the 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



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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 Workmen's Compensation Act. Under Section 3 of the Act negligence of the workman who dies is 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 insurer is liable to pay compensation payable in accordance with the provision of Workmen's Compensation Act, 1923. If the amount of such compensation is higher than the amount of 'no fault liability' under Section 140 of the Motor Vehicles Act, the insurer will not be liable to make the payment under Section 140(50) of the Motor Vehicles Act. If the amount of no fault liability is higher, then no amount need be paid under Workmen's Compensation Act, as the claimant is entitled to the higher of the two amounts, but not both. The order under appeal



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which directs payment of Rs.2,00,000/- to the parents of the deceased on the reasoning that through the negligent employee could not have claimed compensation, nevertheless his parents can, is set aside.”

Hence, it is clear that due to death or bodily injury, the aggrieved or the interested person can make a claim for compensation under both the Workmen's Compensation Act and the Motor Vehicles Act, and that without prejudice to the provisions of Chapter X, he can claim such compensation under either of these Acts but not under both.

12. Though no proof for income of the deceased has been produced, the Tribunal has fixed the income of the deceased at Rs.6000/- per month. On perusal of the judgments as stated supra and Schedule IV of the Workmen Compensation Act, this Court is inclined to fix the income of the deceased at Rs.8,000/- per month and fix the factor at 222.71 for the person completed 21 years of age on the last birthday of the workman immediately preceding the date on which the compensation fell due. Accordingly, this Court is inclined to award a sum of Rs.8,90,840/- ($\text{Rs.8000/-} \times \text{Rs.222.71} \times 50/100$) under the head loss of



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dependency. The interest as mentioned above shall be paid after the expiry of 30 days from the date of accident till the date of payment. The award is modified accordingly.

13. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.7,78,000/- to Rs.8,90,840/-. No Costs.

(ii) the 2nd respondent/Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, less the amount, already deposited, if any.

(iii) On such deposit being made, the claimants / appellants are permitted to withdraw their share of the award amount without insisting on a formal payment out petition, on the same apportionment fixed by the Tribunal.

(iv) the appellants are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.



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Internet : Yes/No

Speaking Order/Non-Speaking Order
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To

The Presiding Officer,
Motor Accidents Claims Tribunal cum Additional District Judge,
Krishnagiri.

A.A.NAKKIRAN, J.

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