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C.M.A.No.3612 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09.02.2023
Pronounced on	21 .02.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.**

**C.M.A.No.3612 of 2021
and C.M.P.No.21152 of 2021**

United India Insurance Company Ltd.,
4, Royal City, Karur Road,
Tiruchirappalli.

...Appellant

Vs.

1.Sumithra
2.Minor.Riddik Roshan
aged ½ year, s/o late Raja
(rep by his mother and natural Guardian
the 1st claimant Mrs. Sumithra)
3.Kandasamy
4.Rani
5.Anitha



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6.C.K.Rajan

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...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, appeal against the award and decree dated 21.02.2020 made in M.C.O.P.No.617 of 2017 on the file of the Motor Accidents Claims Tribunal (Sessions Judge/ Mahila Court), Perambalur.

For Appellant : M/s.D.Bhaskaran
For RR1 to R5 : M/s.T.Gobinath
For R6 : Served- No appearance

JUDGMENT

(Judgment of the Court was delivered by K.GOVINDARAJAN THILAKAVADI,J.)

This Civil Miscellaneous Appeal has been filed by the Appellant/Insurance Company challenging the award dated 21.02.2020 passed by the Motor Accidents Claims Tribunal (Sessions Judge/ Mahila Court), Perambalur, made in M.C.O.P.No.617 of 2017.



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2. Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant/Insurance Company and Mr.T.Gopinath, learned counsel appearing for the respondents 1 to 5 and perused the entire materials on record.

3. The appellant/Insurance Company has challenged the impugned award on the ground that the Tribunal has erroneously awarded a compensation under Section 167 of the Motor Vehicles Act. According to him, the death was caused due to the own negligence of the deceased as no other vehicle was involved in the accident. It is further submitted that the claims tribunal failed to note that the legal heirs of the deceased tortfeasor cannot maintain the petition filed under the provisions of the Motor Vehicles Act. Since the accident happened only due to the own act of the deceased and when the owner is not liable, the insurer cannot be held liable, the Tribunal ought to have computed compensation under the provisions of Employees Compensation Act. It is further submitted that the claimants cannot claim any compensation even against the owner of the vehicle under the provisions of the Act for his own negligence. To support his contention he has relied upon the following decisions reported in:



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" 1. *2006 1 ACC 1*

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2. *2007 (2) TN MAC 9 (SC)*

3. *2010 (2) TN MAC 105"*

4.As seen from the impugned award, that the Tribunal has given a categorical finding that only during the course of employment of the deceased Raja, the accident had happened. The appellant/Insurance Company has also not disputed the same. Eventhough, the respondents/claimants are not entitled to seek compensation under Section 167 of the Motor Vehicles Act, since there was no involvement of a third party vehicle, the respondents/claimants are entitled to claim compensation under the Employees Compensation Act, since the accident happened only during the course of the employment of the deceased. According to the respondents/claimants the accident took place in the course of employment on 18.06.2017 at about 23.00 hours near Therani Saroja Crusher. At the time of the accident, the deceased Raja was driving the Tipper Lorry bearing Registration No.TN 45 AP 0204 with crusher stone in the mud road. While proceeding upwards in the mud road, due to displacement of soil in the mud road, the tipper lorry went in the reverse direction and capsized. In the result, the deceased Raja was caught under the lorry and sustained fatal injuries



and succumbed to the injuries. Thus, the accident had taken place in the course of employment and arisen out of the employment. For such an incident the claim cannot be made against the owner or the insurer under Section 167 of the Motor Vehicles Act. There can be no claim under Section 167 of Motor Vehicles Act, which is a substantive provision that bars claim under Motor Vehicles Act. However, the claim can be considered as one filed by the workmen/Driver under the Employee's Compensation Act, 1923 as held by the Division Bench of this Court in the case of ***Oriental Insurance Company Ltd., Namakkal Vs. Krishnan and four others*** reported in **2003 2 LW 73** the relevant paragraph of the said judgement as reads as follows:

"5. Counsel also invited our attention to a judgment of this Court in the case of Oriental Insurance Co. Ltd., Kalliya Pillai and others, 2002(4) CTC 469=2001-1-L.W. 113, where the court took the view that even CMA.No.934 of 2020 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"

5. In the case on hand, the categorical finding has been given by the Tribunal in the impugned award that the deceased died only during the course of his employment. The appellant/Insurance Company is also not disputing the same. Therefore, the decision referred to supra squarely applies to the facts of this case also. Therefore, we are of the considered view that the assessment of the compensation by the Tribunal under Section 167 of the Motor Vehicles Act is not a correct assessment and the assessment can be made only under the provisions of the Employees Compensation Act 1923.

6. If the assessment of compensation is made under the Employees Compensation Act for the accident that took place on 18.06.2017, the compensation payable to the respondents/claimants as per the formula which is not disputed by the learned counsel for the respondents/claimants is as follows:



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"the age of the deceased being 24 years, the relevant factor is 218.47, maximum monthly wages allowed for calculation under the Act: Rs.8,000/-; $50/100 \times 8000 \times 218.47 = \text{Rs.}8,73,880$, Funeral expenses-5,000= Rs.8,78,880/-
."

7.For the forgoing reasons, the compensation awarded by the Tribunal for a sum of Rs.34,72,000/- with interest 7.5% as against the appellant/Insurance Company is reduced to Rs.8,78,880. Accordingly, to the Civil Miscellaneous Appeal stands **Partly Allowed**. No costs.

8.It is made clear that the respondents/Claimants are entitled for 12% interest per annum from the date of claim petition till the date of realization as per the Employees Compensation Act. The appellant/Insurance Company is directed to deposit the reduced award amount as assessed by this Court together with interest at 12% per annum from the date of claim petition till the date of realization, less amount, if any, already deposited to the credit of M.C.O.P.No.617 of 2017 on the file of the Motor Accident Claims/Tribunal



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(Sessions Judge/Mahila Court), Perambalur 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 directly to the Bank account

of the respondents 1, 3, 4 & 5 as per the ratio of apportionment fixed by the

Tribunal through RTGS, within in period of two weeks thereafter. Insofar as the

share of the second respondent/minor claimant is concerned, the same shall be

deposited in Fixed Deposit in any one of the nationalized Banks till he attains

the age of majority and the interest accrued thereon shall be withdrawn by the

guardian of the minor claimant once in three months directly from the bank.

Consequently, connected miscellaneous petition is closed. No costs.

(R.S.M.,J.) (K.G.T.,J.)

21 .02.2023

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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To:-

The Motor Accident Claims Tribunal,
Sessions Judge/ Mahila Court), Perambalur



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