



C.M.A. No. 2318 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2318 of 2021
and C.M.P. No.12952 of 2021

The Oriental Insurance Company Ltd.,
No.12, Katpadi Road, Gudiyattam,
Vellore District.

... Appellant / 2nd Respondent

Vs.

1. Pushpa
2. Minor Jaikaran
3. Minor Divya
4. Radha

... Respondents / Petitioners

5. S. Jayakumar

... Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 21.11.2017 made in M.C.O.P. No. 38 of 2010 on the file of the Sub Judge, Motor Accident Claims Tribunal, Gudiyattam, Vellore District.

For Appellant	:	Mr. K. Vinod
For RR 1 to 4	:	No Appearance
For R5	:	Given up vide C.M.P. No. 12952/2021



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the insurance company against the Judgment and decree made in M.C.O.P. No. 38 of 2010, dated 21.11.2017 on the file of the Sub Judge, Motor Accident Claims Tribunal, Gudiyattam, Vellore District, wherein the Tribunal has awarded compensation for a sum of Rs.13,80,400/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. On 19.12.2009 at about 12:30AM, the husband of the first claimant namely Kumar was riding a tractor bearing Registration No.TN-23-C-6800, which belongs to the first respondent under whom the said Kumar was working as an employee, on the Krishnagiri to Vaniambadi National Highway, while he reached near Burgur Bus stop near Hotel Panjabi Thaba, an unknown lorry driven by its driver in a rash and negligent manner came in the very same direction dashed against the backside of the said tractor,



which resulted in capsizing of the tractor. Due to the accident, the driver of the tractor, Kumar has sustained grievous injuries and he was admitted in the Government Hospital, Krishnagiri, where he succumbed to injuries. A criminal case was also registered in Cr.No.625/2009 U/s.279, 337 and 304(A) of I.P.C. on the file of Burgur Police Station. Due to the loss of deceased Kumar, his legal heirs has come forward with a claim petition seeking compensation for a sum of Rs.25,00,000/- along with interest @ 18% per annum invoking section 166 of the Motor Vehicles Act against the owner and the insurer of the tractor.

4. The second respondent - insurance company has filed a counter and contended that the case is a hit and run case, hence this respondent - insurance company is not liable to pay the compensation and the claimant shall invoke Workmen's Compensation Act for claiming compensation from the first respondent herein, since the deceased was died during the course of his employment under the first respondent. The insurance company also contended that the claim petition is not maintainable without adding the owner and insurer of the unknown lorry and also the compensation claimed under various heads is on the higher side, hence prays to dismiss the claim



petition.

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5. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 to P.8 were marked. On the side of the respondent, R.W.1 was examined and Exs.R.1 to R.4 were marked.

6. Based on the evidence placed on record, the Tribunal has considered the case of the claimant under the Workmen's Compensation Act and awarded compensation by invoking the provision of Motor Vehicles Act and awarded compensation for a sum of Rs.13,80,400/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and fixed the liability on the second respondent - insurance company to indemnify the first respondent and to pay compensation to the claimants.

7. Aggrieved over the award of the Tribunal, the insurance company has filed this appeal challenging the liability fixed on them to pay the compensation to the claimant.



8. Mr. K. Vinod, learned counsel appearing for the insurance company has submitted that the Tribunal ought to have granted compensation only under the Workmen's Compensation Act, since it is the case of hit and run and the deceased was died during his course of employment under the first respondent, hence the compensation granted under Motor Vehicles Act is not maintainable. He has further submitted that the compensation claimed under the Workmen's Compensation Act, a structured formula has been incorporated under section 4 of the Employee's Compensation Act, for awarding compensation for the case of injury or death caused during the course of employment, hence prays to fix notional income as Rs.8,000/- and to modify the award in terms of Workmen's Compensation Act.

9. I have considered the submission made on both sides and perused the materials placed on record.

10. In this case, before the Tribunal, it was categorically stated by the respondent - insurance company that the deceased was a tractor driver, who was working under the one Dinakaran, hence the claimants are entitled



to claim compensation only from Dinakaran, since the deceased was died during the course of his employment under the said Dinakaran. However, on perusal of Ex.P.2, the registration certificate, shows that the first respondent namely Jayakumar herein as the owner of the tractor and it is also the evidence of the P.W.1 that the deceased was only working under the first respondent Jayakumar. The Ex.P.3 - insurance policy also stands in the name of the Jayakumar, hence the Tribunal has rightly rejected the contention of the second respondent - insurance company regarding the owner of the tractor. This Court also finds no infirmity in the finding of the Tribunal and the same is hereby confirmed.

11. As per section 167 of the Motor Vehicles Act, the injurer or the dependants of the deceased are entitled to invoke Motor Vehicles Act or Workmen's Compensation Act for claiming compensation, however claim under both acts are not maintainable. In this case, the Tribunal has held that the claim shall be maintainable only under the Workmen's Compensation Act, since the deceased herein was died due to the injuries sustained in the course of his employment, hence the claimants are entitled to claim compensation from the employer of the deceased i.e., first respondent as per



the Workmen's Compensation Act and also the insurance policy covers the workmen of the owner of the vehicle. However, the compensation has been awarded as per the calculation made under the Motor Vehicles Act by invoking Section 166, which is based on the faulty liability. In this case, the tortfeasor is an unknown lorry, hence while invoking Workmen's Compensation Act for awarding the compensation, the Tribunal ought to have followed only the structured formula as per schedule IV of the Workmen's Compensation Act. Hence, this Court is of the view that the compensation awarded by the Tribunal based on the Motor Vehicles Act is not proper and accordingly, this Court is inclined to modify the award of compensation by the Tribunal as per the Workmen's Compensation Act and based on the age of the deceased and date of accident, the notional income of the deceased may be fixed as Rs.8,000/- and the total compensation is assessed as follows:

Age of the deceased at the time of accident	=	33 years
Age factor as per Schedule-IV of Workmen's Compensation Act for the age 33	=	201.66
Monthly notional income of the deceased	=	Rs.8,000/-
Compensation as per Schedule - IV of Workmen's Compensation Act (Rs. 8,000 x 50/100 x 201.66)	=	Rs.8,06,640/-



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Funeral expenses = Rs.5,000/-

Total Compensation (8,06,640/- + 5,000/-) = **Rs.8,11,640/-**

12. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	13,10,400/-	8,06,640/-	Reduced
2.	loss of consortium	40,000/-	---	Cancelled
3.	Loss of estate	15,000/-	---	Cancelled
4.	Funeral expenses	15,000/-	5,000/-	Reduced
	Total Compensation	13,80,400/-	8,11,640/-	Reduced

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,80,400/- is hereby reduced to **Rs.8,11,640/- [Rupees Eight Lakhs Eleven Thousand Six Hundred and Forty only]** together along with interest at the rate of **12%** per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance



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Company is directed to deposit the amount awarded 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.38 of 2010 on the file of the Sub Judge, Motor Accidents Claims Tribunal, Gudiyattam, Vellore District. The second respondent - insurance company also given liberty to withdraw the excess amount deposited, if any. On such deposit, the appellants/ claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

21.12.2023

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Index:Yes/No

Speaking Order:Yes/No



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Neutral Citation Case: Yes/No

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K. RAJASEKAR, J.

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To:

1. The Sub Judge,
Motor Accident Claims Tribunal,
Gudiyattam, Vellore District.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

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