



C.M.A.No.2508 of 2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED :11.09.2023**

**CORAM**

**THE HON'BLE MR. JUSTICE P.VELMURUGAN**

**C.M.A.No.2508 of 2018**

**and**

**C.M.P.No.19151 of 2018**

The Divisional Manager,  
M/s.The New India Assurance  
Company Limited,  
Jawaharlal Nehru Street,  
Puducheri -1.

... Appellant

Vs.

1. Sathiya  
  
2. Minor.Sanjay  
S/o Late.Iyyanar,  
Represented by his next friend and mother  
Mrs.Sathiya

3. Poongavanam

4. Krishnaraj

... Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988, against the final award dated 04<sup>th</sup> day of March 2017, passed in M.A.C.T.O.P.No.341 of 2013 by the Motor Accidents Claims Tribunal (in the Court of II Additional District Judge), at Puducheri.



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For Appellant : Mr.J.Michael Visuvasam

For R1to R3 : Mr.P.Veeraraghavan

For R4 : Notice dispensed with

### **JUDGEMENT**

The respondents 1 to 3 who are the claimants, have filed the claim petition before the Motor Accident Claims Tribunal, Pondicherry in M.A.C.T.O.P.No.341 of 2013 against the fourth respondent and the appellant herein.

2. The Tribunal, after enquiry, awarded a sum of Rs.13,52,000/- to the claimants under the following heads:

| <b><i>Heads</i></b>                                   | <b><i>Amount awarded by the Tribunal<br/>(Rs.)</i></b> |
|-------------------------------------------------------|--------------------------------------------------------|
| Loss of estate                                        | 11,52,000/-                                            |
| Loss of consortium                                    | 50,000/-                                               |
| Loss of love and affection<br>for the second claimant | 1,00,000/-                                             |
| Loss of love and affection                            | 25,000/-                                               |



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| <i><b>Heads</b></i>   | <i><b>Amount awarded by the Tribunal<br/>(Rs.)</b></i> |
|-----------------------|--------------------------------------------------------|
| to the third claimant |                                                        |
| Funeral expenses      | 25,000                                                 |
| Total                 | 13,52,000                                              |

Now challenging the said award passed by the Tribunal, the Insurance Company has filed the present appeal before this Court.

3. On earlier occasion, when the matter is listed, the respondents have filed the written arguments and also placed certain decisions.

4. Learned counsel for the appellant/Insurance Company submitted that the claimants/R1 to R3 are not entitled to file claim petition, since the accident had occurred due to own negligence on the part of the deceased. The deceased died during the course of his employment, i.e., while the deceased was driving the Tractor for ploughing the field, due to capsization of the Tractor, he died. Further, the claimants have not proved that the fourth respondent's vehicle had a valid insurance policy on the date of accident. The claimants have not



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proved the age and income of the deceased through proper documentary evidence. Though the manner of the accident does not fall under the Motor Vehicles Act, the claimants have filed the claim petition under Section 166(1)(c) of the Motor Vehicles Act. Therefore, the Tribunal has no jurisdiction to entertain the claim petition. The claimants ought to have approached the Employees Compensation Commissioner. Despite the appellants having raised their defence in the counter before the Tribunal, the Tribunal did not heed on their submissions and the defence taken by the appellant/Insurance Company and erroneously held that the Tribunal has got jurisdiction and also fixed the compensation under the various heads of the Motor Vehicles Act, which is erroneous. Therefore, it is liable to be set aside.

5. Further, the learned counsel for the appellant/Insurance Company submitted that as far as the quantum is concerned, Employees Compensation Act, previously Workmen's Compensation Act would apply, especially Section 4 therein would apply to the employee who sustained injury, during the course of employment. Therefore, the



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quantum has to be fixed under the Employees Compensation Act. At the time of accident, the Employees Compensation Act came into existence. Therefore, the Tribunal ought to have rejected the claim petition with liberty to file the claim petition before the Employment Compensation Commissioner, instead, the Tribunal tried the claim petition, as if the accident had occurred due to motor vehicle. Therefore, under these circumstances, the appeal is liable to be dismissed.

6. Learned counsel appearing for the claimants/respondents 1 to 4 accepts the above submission made by the learned counsel for the appellant/Insurance Company and stated that the present claim petition could be converted into employees compensation and the Award can be fixed accordingly.

7. Heard and perused the materials available on record.

8. Admittedly, the deceased was working as driver under fourth respondent. From the materials, it is found that, occasionally the fourth



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respondent/owner of the Tractor, used to engage his employees for ploughing the Fields, using the Tractor. On the date of occurrence, as usual, the deceased was engaged to plough the Field of the fourth respondent with Tractor, at that time, the Tractor got capsized, due to which, the deceased died.

9. It is not in dispute that the accident had occurred during the course of employment. If the accident had occurred during the course of employment and if the employee had sustained injury or succumbed to death, the claimants can claim compensation only under the Employees Compensation Act and not under the Motor Vehicles Act.

10. Admittedly it was an accident. The injured employee or their legal heirs of the deceased employee can claim compensation either under the Motor Vehicles Act or under the Employees Compensation Act. The option has been given to the employees to invoke either of the said Act. It is not in dispute that, if it is motor accident, claim can be made under the Motor Accidents claim before the Motor Accidents



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Claims Tribunal. In the F.I.R, it is clearly stated that the accident had occurred while the deceased was ploughing the Field of the fourth respondent. Hence, the Motor Vehicles Act would not get attracted in this case. The Employees' Compensation Act only would get attracted.

11. The accident had occurred in the year 2010. The employee should not suffer on the ground of technicalities. However, the appellant is the insurer for the fourth respondent and the claim is also covered under the insurance policy and hence the compensation has to be given either under the Motor Vehicles Act or under the Employees Compensation Act. The appellant/Insurance Company is liable to pay the compensation. The Insurance company is liable to indemnify the loss caused due to the fourth respondent's vehicle.

12. In the counter filed before the Tribunal, the appellant/Insurance Company has raised a defence that the Tribunal has no jurisdiction, and it is not an motor accident and that even the Tribunal has not framed issues or framed points for consideration as the case may be.



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13. While considering the fact and events, and that the defence raised in the counter affidavit of Insurance Company is erroneous, this Court finds that the Tribunal has no jurisdiction and there is a specific provision or specific Act covered for the accident that had occurred during the course of employment. Employees Compensation Act alone would apply. There is no dispute in coverage of policy and liability. Therefore, this Court finds that the appellant/Insurance Company is liable to pay the compensation under the Employees Compensation Act not under the Motor Vehicles Act.

14. As far as the quantum is concerned, the Employees Compensation Act, especially Section 4 of the Employees Compensation Act, would apply. As per Birth Certificate of the deceased, at the time of accident, the deceased was 31 year old. As per Section 4 of the Employees Compensation Act, at the time of accident, the salary/wage of the employees is fixed as Rs.8,000/- per month. Therefore, for compensation purpose, it has to be taken 50% of the salary. Based on the



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schedule, under the said Employees Compensation Act, multiplier “4” would apply for 31 years and factor “205.95” would apply. [ ie., **205.95 x 4,000=Rs.8,23,800** ] and he is entitled to funeral expenses of Rs.5000/- . i.e, Total compensation =Rs.8,28,800/- (Rs.8,23,800 + Rs.5,000). The amounts as awarded by the Tribunal under the other heads are set aside.

15.The claimant are entitled to 12% interest from the date of filing of the petition till the date of realization. Learned counsel for the appellant/Insurance Company would submit that the Insurance Company has already deposited a sum of Rs.13 lakhs. If the claimants were not allowed to withdraw the deposited amount, the Insurance Company is liable to pay 12% interest from the date of petition till the date of realization.

16. In the result,

(i) This appeal is partly allowed and the Appellant Insurance Company is directed to deposit the modified award amount **Rs.8,28,800/-** along with interest at the rate of 12% per annum from the date of claim petition till the date of payment and costs, after deducting the amount if



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any already deposited, to the credit of M.A.C.T.O.P.No.341 of 2013 on the file of the Motor Accident Claims Tribunal ( II Additional District Judge), at Puduchery, within a period of four months from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the claimants along with accrued interest through RTGS/NEFT within a period of two weeks thereafter.

(iii) The Insurance Company is permitted to withdraw the excess amount, if any already deposited by them before the Tribunal.

(iv) As far as the share of minor is concerned, his share shall be deposited in any beneficial Fixed Deposit Scheme in any Nationalized Bank and the interest accrued thereon shall be withdrawn by the mother and the same to be used for the welfare of the minor, till he attains majority.

(v) The claimants are directed to pay necessary Court fee, if any, on the enhanced compensation amount.



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(vi) The proportion of allocation of shares adopted by the Tribunal shall stand confirmed.

(vii) In other respects, the Award of the Tribunal is hereby confirmed.

(viii) There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**11.09.2023**

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*Index: Yes/No*

*Speaking Order: Yes/No*

*Neutral Citation: Yes/No*



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**To**

1. The II Additional District Judge  
The Motor Accidents Claims Tribunal  
II Additional District Court at Puducheri.
2. The Section Officer,  
VR Section,  
High Court, Madras.



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**P.VELMURUGAN, J.**

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