



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4718 of 2019

1. Thayamma  
2. Minor Mageswari  
D/o. Mahalingam  
(Minor rep. By his mother  
the first petitioner)

3. Janagi

.. Appellant

Vs.

1. Abul Rahim

2. The Divisional Manager,  
IFFCO – Tokio General Insurance Co. Ltd.,  
No.145/131, Ground Floor,  
Nelson Manickam Road,  
Medha Nagar, Chennai.

.. Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.02.2017 made in MACT. OP.No.173 of 2016 on the file of the Special Sub Judge, Motor Accidents Claims Tribunal, Tiruvannamalai.

For Appellant : Mrs.A.Subadra  
For Respondents : Mr.J.Lenin  
For Lencorp Legal  
Mr.S.Arunkumar R2



## **J U D G M E N T**

**WEB COPY** This appellants/claimants have come forward with this appeal seeking enhancement of compensation by challenging the judgment and decree dated 01.02.2017 made in MACT. OP.No.173 of 2016 on the file of the Special Sub Judge, Motor Accidents Claims Tribunal, Tiruvannamalai.

2.Brief fact which are necessary for disposal of this appeal is as follows:-

On 03.08.2006 at about 10.30 AM the deceased was driving the mini-door auto bearing Reg. No.TN 07 AJ 7585 from Perunkulathur Village to Rayandapuram near a primary health centre. At that time, another vehicle suddenly crossed the road. As a result, the deceased lost his control and capsized the auto. Due to which, he died on the spot. The other passengers sustained injuries and the cleaner who travelled in the said vehicle died at Tiruvannamalai Government Hospital. Thereby, the appellants/claimants have filed a claim Petition before the Motor Accidents Claims Tribunal claiming compensation of Rs.15,00,000/- against the owner of the vehicle and its insurer and the same was taken on file in MCOP. No.173 of 2016.



3. Before the Tribunal, during trial, in order to prove the case, on the side of the appellant, two witnesses were examined viz., PW1 and PW2 and marked 4 documents viz., Exs.P1 to P4, On the side of the respondent/Insurance company, two witnesses were examined and six documents were marked. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.50, 000/- as compensation to the claimants. Aggrieved by the said award, the appellants have has filed this appeal before this Court for enhancement of the compensation.

4. The learned counsel for the appellants/claimants submitted that admittedly, the claimants have filed a claim petition before the Tribunal under Section 166 of MV Act. However, the Tribunal has converted the said petition under Section 163(A) of the MV Act without any basis and awarded a sum of Rs.50,000/- which was very low. Even the deceased has not possessed valid driving license at the time of accident, the appellants are entitled to claim compensation as the deceased and the first respondent have employee employer relationship. This Court may quash the same and further this Court may convert the claim petition under Workmens Compensation



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5. The learned counsel for the second respondent submitted that the deceased had no valid license at the time of accident. The license had expired in the year 1999 itself and the accident had happened on 03.08.2006. For converting the case from the Motor Vehicle Act to the Workmens' compensation Act is permissible only in respect of third party claim when the person is not involved in the accident. In the present case, the deceased only had driven the vehicle, owned by the first respondent and insured with the second respondent, on his own the accident had happened. In such scenario, the claimants claimed to convert the claim petition under the Workmens Compensation Act, which is not sustainable.

6. In support of his claim, the learned counsel relied upon the decision, the learned counsel relied upon the decision rendered by the Hon'ble Apex Court in the case of ***Beli Ram Vs. Rajinder Kumar and Another reported in 2020 (11) scale 111.***



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7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The factum of the accident is not disputed by the parties. Admittedly, the deceased was driving the vehicle which was owned by the first respondent and insured with the second respondent and met with an accident and died due to the accident. The claimants have filed claim petition under Section 166 of MV Act. After trial, the Tribunal came to the conclusion that the deceased is not a third party and hence, claim petition is not maintainable under Section 166 of MV Act and it was converted to Section 163(a) of MV Act and awarded Rs.50,000/- as compensation. Now the claimants requested to convert the same to Workmens Compensation Act. However, for converting Workmens Compensation Act itself is not maintainable in view of the decision rendered by the decision rendered by the Apex Court in the case of ***Beli Ram and*** the relevant paragraphs are extracted hereunder:

*"23. When we turn to the facts of the present case there is*



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*almost an identical situation where the appellant has permitted to let the first respondent driver drive the truck with an expired licence for almost three (3) years. It is clearly a case of lack of reasonable care to see that the employee gets his licence renewed, further, if the original licence is verified, certainly the employer would know when the licence expires.*

*And here it was a commercial vehicle being a truck. The appellant has to, thus, bear responsibility and consequent liability of permitting the driver to drive with an expired licence over a period of three (3) years. The only thing we note is that fortunately there has been no accident with a third party claimant but the person who has caused the sufferance and sufferer are one and the same person, i.e., the first respondent driver. We are, however, dealing with the determination under the [Compensation Act](#) and those provisions are for the benefit of the workmen like the first respondent, even though he may be at fault, by determining a small amount payable to provide succor at the relevant stage when the larger 11 (supra) issues could be debated in other proceedings.*

*The only exception is in the provisos to [Section 3](#) of the Compensation Act, which is not the factual situation in the present case. The relevant provision reads as under:*

*“3. Employer' s liability for compensation.-*

*(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer*



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*shall be liable to pay compensation in accordance with the provisions of this Chapter:*

*Provided that the employer shall not be so liable--*

*(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding [four] days;*

*(b) in respect of any [injury, not resulting in death, caused by] an accident which is directly attributable to--*

*(i) the workman having been at the time thereof under the influence of drink or drugs, or*

*(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or*

*(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.” We are not aware whether any other proceedings have been initiated or not, at least, none that have been brought to our notice. The aforesaid findings of the initial lack of care by the first respondent in not renewing the driving licence would be present, but the lack of care of the appellant as the employer would also arise. We have penned down the aforesaid views as such a situation is quite likely*



*to arise in proceedings under the [MV Act](#) where a third party is claiming the amount.*

*Proceedings here being under the [Compensation Act](#), the consequences are not flowing to the first respondent as the initial negligent person.*

*24. In view of the aforesaid, the appeals are dismissed by settling the aforesaid question of law and leaving the parties to bear their own costs."*

9. On perusal of the above judgment, it is seen that if a workman sustained injury by accident, his employer shall be liable to pay compensation. In the present case, the deceased had not possessed driving license at the time of accident and the same was expired in the year 2009 itself and driven the vehicle and on his own negligence, he met with an accident and died on the spot. The deceased is a tort-feaser and therefore, the claimants are not entitled to claim compensation either under Workmens Compensation Act or Motor Vehicles Act. Therefore, the Tribunal has rightly awarded compensation to the claimants which does not warrant any interference.



10. In the result, the civil miscellaneous appeal is dismissed. The award passed by the Tribunal is confirmed. No costs.

08.11.2024

Index : Yes  
Speaking Order : Yes  
rli

To

The Special Sub Judge,  
Motor Accidents Claims Tribunal, Tiruvannamalai.



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**M.DHANDAPANI,J.**

Rli

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