IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.1675 of 2022

1. Panchalai
2. Minor Nandhini
3. Minor Leelavathy

(Minors rep. by their mother Panchalai) ... Petitioners/ Appellants

Vs.

1. C.P. Prabakaran

2. The Divisional Manager,
Divisional Office,
The New Indian Assurance Co.Ltd.,
Big Bazzar Street,
Tiruvannamalai. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 25.11.2021 in M.C.O.P. No.1349 of 2013 on the file of the Special Subordinate Judge, Motor Accidents Claims Tribunal Tirupattur.

For Appellant	:	Mr. F. Terry Chella Raja
For R1	:	No Appearance
For R2	:	M/s. A. Saloni (For Mr. C. Ramesh Babu)

*****

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants challenging the Judgment and decree passed in M.C.O.P. No.1349 of 2013 dated 25.11.2021, on the file of the Special Subordinate Judge, Motor Accidents Claims Tribunal Tirupattur, whereby the Tribunal has dismissed the claim petition, filed by the appellants herein.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. The appellants/ claimants are the dependants of the deceased Bharathy, who worked under the first respondent as a daily wage. The case of the claimants is that, on 25.12.2008, the deceased Bharathy was asked to travel in the first respondent's tractor bearing Registration No.TN-23-C-7588 along with the co-workers to a construction site at Sathangadu, Chennai. While, the said tractor reached Ponneri Highway 200 feet road Junction, near Manali, the driver of the tractor, turned the tractor suddenly on the left hand side, in order to avoid collision with the lorry, which came

in front of the tractor. Due to which, the deceased, who seated in the mud guard of the tractor, fell down and the left side tyre of the tractor smashed on the stomach of the deceased, thereby, he sustained grievous injuries. Immediately, the deceased was taken to hospital, where he succumbed. Due to the death of the said Bharathy, the claimants had filed claim petition, seeking compensation for a sum of Rs.15,00,000/-, by invoking Section 166 of the Motor Vehicles Act, 1988.

4. The first respondent, who is the owner of the tractor and employer of the deceased, filed his counter, admitting the employee-employer relationship between the deceased and him. He has also stated that the accident have taken place due to the negligent driving by the driver of the tractor, thereby the claimants, who are the dependants of the deceased are entitled to claim compensation under the Employee's Compensation Act, 1923. He also stated that his tractor has been insured with the second respondent - insurance company and the policy was in force at the time of accident.

5. The second respondent - insurance company filed a counter

and contended that the accident had happened due to the negligence act of the deceased, who had travelled in the mudguard of the tractor, at the time of occurrence. Further, totally 13 persons were travelled in the trailer and tractor and thereby, there is also a violation of the policy condition. The driver of the first respondent also not having valid driving licence to drive the tractor, hence they are not liable to pay compensation to the claimants.

6. Before the Tribunal, on the side of the claimants, P.W.1 was examined and Exs.P.1 to P.7 were marked and on the side of the respondents, R.W.1 to R.W.4 were examined and Exs.R.1 to R.6 were marked. The Tribunal after considering the pleading and evidence placed on record has held that, the deceased Bharathy had travelled in the mudguard of the tractor, hence, there is a violation of policy conditions and further held that the insurance company is not entitled to indemnify the owner of the tractor under Section 166 of the Motor Vehicles Act, 1988, thereby, dismissed the claim petition.

7. Aggrieved over the dismissal of the claim petition, the claimants have come forward with this appeal.

8. The learned counsel appearing for the appellants/ claimants submits that, it is true that the deceased had travelled in the mud guard of the tractor, thereby there is a violation of policy condition and the insurance company need not pay compensation under the Motor Vehicles Act. However, the deceased being the employee of the first respondent, further the employee - employer relationship was already admitted by the parties herein, the claimants are entitled to get compensation under the Employee's Comensation Act, 1923. He further submitted that, since the deceased is an employee under the first respondent, the dismissal of the claim petition by the Tribunal under Section 166 of the Motor Vehicles Act, shall not bar this Court, granting compensation under the Employee's Compensation Act, 1923. He also relied on judgments of the Division Bench of this Court in ***M. Anbalagan vs. K.M. Asalm Basha and another [CDJ 2015 MHC 6350]*** and ***The Oriental Insurance Company Ltd. vs. Kaliya Pillai and others [CDJ 2003 MHC 038]***.

9. Per contra, the learned counsel appearing for the second respondent - insurance company submits that the deceased had acted

negligently by travelling in the mudguard of the tractor. Further, the driver of the tractor was also not having valid driving licence, at the time of accident, thereby, the Tribunal after appreciating the evidence placed on record, rightly held that the insurance company need not indemnify the first respondent. She also submitted that the claimants are only entitled to claim compensation from the first respondent, therefore, prays to confirm the award of the Tribunal.

10. I have considered the submissions made on both sides and perused the entire materials available on record.

11. A Division Bench of this Court ***The Oriental Insurance Company Ltd. vs. Kaliya Pillai and others [CDJ 2003 MHC 038]*** in paragraph No.6, it has observed as follows:

> *"6. It is seen from the materials that in respect of death of Pavulkumar alias Kumar, his parents have prayed for a compensation of Rs.4 lakhs under Section 166(1) of the Motor Vehicles Act, 1988. By pointing out para 23 of the claim petition, the learned counsel for the appellant Insurance company raised his contention that since the deceased fell down from the moving tractor and died, which he was driving the same from Sankarapuram to Moongilthuraipattu, neither himself nor any one*

could claim compensation for his own wrong. In other words, it is his main contention that the deceased being a tort-feasor, the claimants namely his parents are not entitled to claim compensation under the Motor Vehicles Act. Learned counsel appearing for the respondents drew our attention to Section 167 of the Motor Vehicles Act, 1988, and contended that irrespective of the provisions in the Workment's Compensation Act, 1923, they can very well maintain the claim petition under the Motor Vehicles Act. It is relevant to refer Section 167 of the Motor Vehicles Act, 1988.

"Section 167. Option regarding claims for compensation in certain cases - Notwithstanding anything contained in the Workment's Compensation Act, 1928 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workment's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."

It is true that due to death or bodily injury, the aggrieved or interested person can make a claim for compensation under both of the Workment'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. The only bar is that the aggrieved person/ persons cannot claim compensation under both the Acts."

12. After relying on the above judgment, another Division Bench of this Court in ***M. Anbalagan vs. K.M. Asalm Basha and another [CDJ 2015 MHC 6350]*** has followed this judgment and held in paragraph Nos.9 to 11 as follows:

"9. However, as rightly contended by the learned counsel for the second respondent, this Court is empowered to award compensation as payable under the Employee's Compensation Act, 1923. In Oriental Insurance Company vs. Kaliya Pillai an another, reported in 2003-1-L.W.113, a Division Bench of this Court held that the aggrieved or interested person can make a claim for compensation either under the Workment's Compensation Act or under the Motor Vehicles Act. The only bar is that the claim cannot be made under both the Acts.

10. The Division Bench pointed out that the insurer's liability is to be determined not only with reference to the provisions of the Motor Vehicles Act, but also with reference to the contract of insurance. Therefore, the Division bench held that the compensation as payable under the Workment's Compensation Act, could at least be awarded.

11. A similar view was taken by yet another Division Bench of this Court in the Oriental Insurance Co. Ltd., vs. Krishnan and others, reported in 2003-2-L.W.73. Therefore, even if the appellant is not entitled to make a claim, as a third party under Section 166 of the Motor Vehicles Act, he can at least make a claim under the Employee's Compensation Act, 1923."

13. After observing the above, the Division Bench has granted compensation in the appeal filed against the dismissal of the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, awarded compensation by invoking Employee's Compensation Act, 1923. The above judgments of the Division Bench, squarely applicable to the present case also.

14. Admittedly, in this case, the employee-employer relationship is being pleaded and the evidence adduced also supports the same, further the claim petition was dismissed by the Tribunal, on the ground that the negligence on the part of the deceased, who travelled in the mud guard of the tractor. It is true that this Court in several judgments has held that a person, travelling in the mud guard of the tractor is termed as violation of policy condition and the insurance company is not liable to indemnify the owner of the vehicle. Under Employee's Compensation Act, if the employee - employer relationship has been established and if there is a valid insurance coverage, then the insurance company is liable to pay compensation to the employee of the insured, who sustained injuries or death, during his course of employment and for the purpose of deciding the compensation in this case, the relevant provisions of the Employee's Compensation Act is extracted hereunder:

> *"**3. Employer's liability for compensation.-** (1) If personal injury is caused to a *[employee] by accident arising out of and in the course of his employment, his employer 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 *[employee] for a period exceeding three*

days;"

*"**4. Amount of compensation.**--(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:--*

> ***(a)** where death results from the injury an amount equal to [fifty per cent.] of the monthly wages of the deceased [employee] multiplied by the relevant factor; or an amount of [one lakh and twenty thousand rupees], whichever is more;*
>
> ***(b)** where permanent total disablement results from the injury an amount equal to [sixty per cent.] of the monthly wages of the injured [employee] multiplied by the relevant factor; or an amount of [one lakh and forty thousand rupees],whichever is more:*
>
> *[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b);]*
>
> *Explanation I.--For the purposes of clause (a) and clause (b), "relevant factor", in relation to a [employee] means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the [employee] on his last birthday immediately preceding the date on which the compensation fell due."*
>
> ***(c)** where permanent partial disablement results from the injury.*
>
> *(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and*

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

Explanation I.—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II.—In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d) *where temporary disablement, whether total or partial results from the injury a half-monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the [employee], to be paid in accordance with the provisions of sub-section (2).*

(1A) *Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a [employee] in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such [employee] in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the [employee] in accordance with the law of that country.*

(1B) *The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (I), such monthly wages in relation to an employee as it may* *consider necessary;*

***(2)** The half-monthly payment referred to in clause (d) of sub-section(1) shall be payable on the sixteenth day—*

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

Provided that—
***(a)** there shall deducted from any lump sum or half-monthly payments to which the [employee] is entitled the amount of any payment or allowance which the [employee] has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and*

***(b)** no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the [employee] before the accident exceeds half the amount of such wages which he is earning after the accident.*

Explanation.—Any payment or allowance which the [employee] has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

***(2A)** The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.*

(4) *If the injury of the [employee] results his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of [two thousand and five hundred rupees] for payment of the same to the eldest surviving dependant of the [employee] towards the expenditure of the funeral of such [employee] or where the [employee] did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.]*

4A. Compensation to be paid when due and penalty for default*.—(1) Compensation under section 4 shall be paid as soon as it falls due.*

(2) *In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the [employee], as the case may be, without prejudice to the right of the [employee] to make any further claim.*

(3) *Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—*

> ***(a)*** *direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher, rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette, on the amount due; and*
>
> ***(b)*** *if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount by way of penalty:*

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to *the employer to show cause why it should not be passed.*

Explanation.—For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

(3A) *The interest and the penalty payable under sub-section (3) shall be paid to the [employee] or his dependant, as the case may be."*

15. Section 3 of the Act 1923 mandates the employer's to pay compensation to the injured employees, if the injury is caused by accident arising out of and and his course of employment. The compensation is paid in accordance with the provisions of the Chapter - II. Section 4-1(A) and 4-1(B) prescribes amount of compensation to be paid to the deceased or the employees, who sustained permanent disablement from the injuries. The proviso to this section empowers the Central Government by notification to enhance the amount of compensation.

16. Section 4-1(B) prescribes the Central Government to issue notification to issue notification for the purpose of specifying the monthly wages in relation to the employees. Section 4(2-A) prescribes that the employee shall be reimbursed with the actual medical expenses incurred by him. Section 4(4) provides payment of funeral expenses. Section 4 not only

provides payment of monthly wages as compensation, it mandates reimbursement of actual medical expenses and also payment of funeral expenses in case of death. The injured or deceased are entitled for compensation under the head loss of wages, reimbursement of medical expenses, funeral expenses in case of death.

17. In this case, the evidence placed on record shows that nearly 13 persons were transported in the tractor and trailer towards a construction site, as per the instructions of their employer. Further, Ex.R.3 - insurance policy also shows that the first respondent has insured the vehicle with the second respondent herein and as per Ex.R.1 - insurance policy, the first respondent has also insured his employees under the Employee's Compensation Act and premium has been collected by the insurance company for the helpers/ employees, who were involved in construction, erection of buildings and towers by the first respondent.

18. Admittedly, in this case, there is no denial that the deceased falls in the category of helpers and also the fact that the deceased has not fallen from the mud guard of the tractor under the influence of alcohol or

drugs. Similarly, the case does not fall within any of the disqualification provided under Section 3(a) and 3(b) of the Employee's Compensation Act, 1923, hence, the dependants of the deceased are entitled to get compensation under Section 3 of the Employee's Compensation Act, 1923.

19. The contention of the insurance company that the decased has travelled in the mud guard of the tractor alone, is not a ground to deny the compensation under the Employee's Compensation Act. Unless, there is sufficient evidence to show that the act of the deceased falls under any of the disqualification clause, as per the Employee's Compensation Act, the same is not sustainable. Therefore, the contention of the insurance company is hereby rejected.

20. The next contention raised by the insurance company is that there is a violation of policy condition, stating that the driver of the tractor has no valid driving licence, at the time of accident. The learned counsel appearing for the insurance company also relied on the judgment of the Hon'ble Apex Court in ***Beli Ram Vs. Rajinder Kumar and Ors. [MANU/SC/0993/2020]***, wherein the Apex Court has approved the

judgment of the Himachal Pradesh High Court in National Insurance Company and held in paragraph Nos.21 and 22 as follows:

> *"**21.** The learned Judge debated the question of the consequences of the MV Act being a beneficial piece of legislation. Thus, if two interpretations were possible, it was opined that the one which is in favour of the claimants should be given, but violence should not be done to the clear and plain language of the statute. Thus, while protecting the rights of the claimants by asking the insurance company to deposit the amount, the recovery of the same from the insured would follow as the sympathy can only be for the victim of the accident. The right which has to be protected, is of the victim and not the owner of the vehicle. It was, thus, observed in para 18 as under:*
>
> > *18. When an employer employees a driver, it is his duty to check that the driver is duly licensed to drive the vehicle. Section 5 of the Motor Vehicles Act provides that no owner or person incharge of a motor vehicle shall cause or permit any person to drive the vehicle if he does not fulfill the requirements of Sections 3 and 4 of the Motor Vehicles Act. The owner must show that he has verified the licence. He must also take reasonable care to see that his employee gets his licence renewed within time. In my opinion, it is no defence for the owner to plead that he forgot that the driving licence of his employee had to be renewed. A person when he hands his motor vehicle to a driver owes some responsibility to society at large. Lives of innocent people are put to risk in case the vehicle is handed over to a person not duly licensed. Therefore, there must be some evidence to show that the owner had either checked the driving licence or had given instructions to his driver to get his driving licence renewed on expiry thereof. In the present case, no such evidence has been led. In view of the above discussion,*

I am clearly of the view that there was a breach of the terms of the policy and the Insurance Company could not have been held liable to satisfy the claim."

22. *We have reproduced the aforesaid observations as it is our view that it sets forth lucidly the correct legal position and we are in complete agreement with the views taken in all the three judgments of three different High Courts with the culmination being the elucidation of the correct legal principle in the judgment in the Hem Raj (supra) case."*

21. Before the Tribunal, on the side of the first respondent, the driver of the tractor has been examined as R.W.4 and he has stated that he possess valid driving licence to drive the tractor, at the time of accident. Though, the copy of the driving licence was not marked, it is the burden on the insurance company to prove the fact of non-possession of valid driving licence. However, the insurance company has not examined any of the official from the Regional Transport Office or any other documents to support their contention. Therefore, this Court is of the view that the insurance company has failed to prove the fact that the driver of the tractor was not having valid driving licence, at the time of accident, hence, there is no violation of policy condition and this contention of the insurance company is also hereby rejected.

22. In view of the above, the dismissal of the claim petition filed by the claimants by the Tribunal, is not proper and the same is hereby set aside. Accordingly, considering the date of accident, age of the deceased as per the post mortem certificate marked as Ex.P.2, nature of work of the deceased and by following the Notification issued by the Central Government under Section 4(1)(B) of the Employee's Compensation Act, the monthly notional income of the deceased is fixed as Rs.4,000/- and by using structured formula, the compensation to the claimants is assessed as follows:

Age of the deceased at the time of accident	=	37 years
Age factor as per Schedule-IV of Workmen's Compensation Act for the age 37	=	192.14
Monthly notional income of the deceased	=	Rs.4,000/-
Compensation as per Schedule - IV of Workmen's Compensation Act (Rs. 4,000 x 50/100 x 192.14)	=	Rs.3,84,280/-
Funeral expenses	=	Rs.5,000/-
Total Compensation (3,84,280/- + 5,000/-)	=	**Rs.3,89,280/-**

23. In the result, this Civil Miscellaneous Appeal is allowed. The award of the Special Subordinate Judge, Motor Accidents Claims Tribunal Tirupattur is hereby set aside and this Court is inclined to award

compensation for a sum of **Rs.3,89,280/-** along with interest @ **12%** per annum, excluding the default period, if any. The second respondent - Insurance 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.1349 of 2013 on the file of the Special Subordinate Judge, Motor Accidents Claims Tribunal, Tirupattur. On such deposit, the first appellant herein, who is the wife of the deceased is entitled to **Rs.2,89,280/- (Rupees Two Lakhs Eighty Nine Thousand Two Hundred and Eighty only)**, the second and third appellants, who are the minor children of the deceased are entitled to **Rs.50,000/- (Rupees Fifty Thousands only) each,** of the award amount now awarded by this Court along with interest and costs. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Accounts of the first appellant and the award amount of the second and third appellants shall be deposited in any of the Nationalized Bank as fixed deposit under the guardianship of their mother, till they attain the age of majority. Consequently, connected civil miscellaneous petition stands closed. Since, this Court has awarded compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the compensation amount awarded. There shall be no order as to costs in the present appeal.

08.11.2024

stn
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Special Subordinate Judge,
   Motor Accident Claims Tribunal,
   Tirupattur.

2. The Section Officer,
   V.R.Section,
   High Court, Chennai.

K. RAJASEKAR, J.

stn

C.M.A. No. 1675 of 2022

08.11.2024