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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1379 of 2023
and CMP No.13796 of 2023

The Divisional Manager
Oriental Insurance Company Limited
Vellore (insurer of Tanker Lorry -
TN 02 BA 7479), having office
at Arcot Road, Vellore.

.. Appellant

.vs.

1.C.Alliammal
2.G.Chakravarthi
3.C.Aruna
4.C.Saminathan
5.Globe Transport Corporation
Chennai (owner of Tanker Lorry -
TN 02 BA 7479), having office
at No.6, AE Block, 7th Street
10th Main Road
Anna Nagar, Chennai.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Decree and Judgment in MCOP No.322 of 2018, dated 12.10.2022, on the file of the Motor Accident Claims Tribunal (I Additional District and Sessions Court, Vellore) Vellore District.

For Appellant : Mr.K.Vinod

For Respondents : Ms.D.Jeevitha [R1 to R4]
(Amicus Curiae)



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JUDGMENT

The Insurance Company aggrieved by the award passed by the Motor Accident Claims Tribunal (I Additional District and Sessions Court, Vellore) Vellore District, in MCOP.No.322 of 2018, dated 19.10.2022, has filed the present appeal before this Court.

2.The claimants who are the parents, sister and brother of the deceased Sakthivel, filed the claim petition on the ground that the deceased Sakthivel on 08.02.2018 was proceeding in his two wheeler at Anna Salai and at about 5.30 hours when the vehicle came near the bus stand, the offending vehicle which was a Tanker lorry was driven in a rash and negligent manner and it came in the opposite direction and hit the two wheeler. The deceased sustained fatal injuries and he died on the way to the hospital. An FIR came to be registered in Crime No.58 of 2018 against the driver of the offending vehicle. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstance of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle.



4.The Tribunal having reached such a finding, proceeded to fix the total compensation at Rs.15,37,500/- under various heads as follows:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1	Loss of Income	14,28,000.00
2	Parental Consortium to the petitioners 1 and 2	88,000.00
3	Loss of Estate	16,500.00
4	Transport Expenses	5,000.00
	Total	15,37,500.00

5.The above compensation was directed to be paid with interest at the rate of 7.5% p.a.

6.The insurance company aggrieved by the award passed by the Tribunal has filed the present appeal before this Court.

7.When the matter came up for hearing on 13.06.2024, this Court passed the following order:

Notice served on the respondents and their names have also been printed in the cause list. The Insurance Company is questioning the very maintainability of the claim petition on the ground that there is a complete bar under Section 53 of the Employees State Insurance Act, 1948, in receiving compensation under any other Act. The claimants have not engaged any counsel



till date and they should not go unheard. Therefore, this Court is inclined to appoint Ms.D.Jeevitha (Reg.No.1402/2020), mobile No.9952534026 to represent respondents 1 to 4 and to assist this Court. Registry is directed to print the name of Ms.D.Jeevitha, who has been appointed to represent respondents 1 to 4.

2.Post this case for hearing on 27.6.2024.

8.The case was thereafter listed on 02.07.2204 and the following order was passed by this Court:

When the matter was taken up for hearing today, the learned counsel for the appellant relied upon the following judgements :-

(a) [National Insurance Company Limited Vs Mahalakshmi and others] reported in 2024 1 TNMAC 34

(b) [United India Insurance Co Ltd.,Vs.Vijaya R Baait and another] reported in 2007 ACJ 463

(c) [National Insurance company Limited Vs. Hamida Khatoon and others] reported in 2009 13 SCC 361 .

2. The learned counsel by relying upon the above judgments submitted that where the compensation is received by the claimants under the ESI Act, no compensation can be claimed under the Motor Vehicles Act. The learned counsel submitted that the payment of pension to the dependants of the deceased is the mode in which the compensation is paid by the ESI Corporation.



3. Learned Amicus curiae appointed by this Court relied upon the order passed by this Court in CMA No.2926 of 2018 dated 27.02.2020 to substantiate that the benefits granted under the ESI Act is different from the compensation awarded under the Motors Vehicles Act.

4. In the light of the decisions that were relied upon by the learned counsel for the Appellant, the learned Amicus curie shall go through the judgments and make her submissions. The learned Amicus curiae shall also take specific instructions as to the mode in which the compensation is paid by the ESI Corporation in case of an accident.

5. Post this case under the caption for “Part heard cases” on 09.07.2024.

9. The case was once again listed for hearing on 09.07.2024 and this Court passed the following order:

Heard the learned amicus curiae appearing on behalf of the claimants. The learned counsel submitted that the three judgments that were relied upon by the learned counsel for the Insurance Company will not apply to the facts of the present case, since those were cases where the deceased in one case and injured in two other cases were in employment and the accident had taken place in the course of the employment. However, in the present case, the claim is made against the offending vehicle since the deceased was a



third party and therefore, merely because some pension amount is received by the parents, that will not be a bar to move a claim petition under Section 166 of the Motor Vehicles Act, 1988.

2.The Tribunal has relied upon some judgments at paragraph No.15 of the judgment to come to a conclusion that the claim under Section 166 of the Motor Vehicles Act, 1988, will not be barred by receiving pension under the ESI Act.

3.The learned counsel on either side shall collect all the relevant judgments in this case, so that an authoritative pronouncement can be given in this appeal.

4.Post this case under the same caption on 16.07.2024.

10.Heard Mr.K.Vinod, learned counsel for the appellant – Insurance Company and Ms.D.Jeevitha, learned counsel for R1 to R4.

11.The learned counsel appearing on either side relied on the following judgments:

- 1.Tata AIG Gen. Insurance Co., Ltd., v. Ram Avtar reported in (2019 ACJ 210)
- 2.Kiriakose v. Santhosh Kumar reported in (2010 ACJ 662)
- 3.United India Insurance Co., Ltd., v. Vaneetha reported in (2019 PHHC 124492)
- 4.United India Insurance Co.,Ltd., v. Miss Vijaya reported in (2005 (4) MH LJ 1018)
- 5.Shridevi v. S.Sarojini reported in (2011 ACJ 161)
- 6.Lal Dei and Others v. Himachal Road Transport reported in (2007 8 SCC 319)



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7.E.Natarajan v. V.Dhanagopal and another made in CMA No.483 of 2018, dated 21.02.2022.

8.United India Insurance Co.,Ltd., v. Vipin Kumar and Others reported in (2019 SCC Online Del 9802).

12.This Court has to take into consideration primarily two provisions under the Motor Vehicles Act, 1988 [hereinafter referred as 'M.V. Act'] and two provisions under the Employees' State Insurance Act, 1948 [hereinafter referred as 'ESI Act']. Insofar as the M.V. Act is concerned, the claim petition has been filed under Section 166 of the M.V. Act. Section 167 of the M.V. Act provides that whenever the death of or bodily injury to any person gives rise to a claim for compensation under the M.V. Act and also under the Workmen's Compensation Act, 1923 [hereinafter referred as the W.C. Act], the person entitled for such compensation must choose either of those Acts to claim compensation and he cannot do it under both enactments.

13.Section 53 of the ESI Act, specifically bars against receiving or recovery of compensation or damages under any other law inspite of an employment injury sustained by the insured person as an employee under the Act.

14.The claim can be initiated under the M.V. Act inspite of the bar provided under Section 53 of the ESI Act in a case where ;



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(a) the accident takes place in a public place

(b) the injury is not an employment injury and ;

(c) such a claim is made against a third party and not against the employer.

15. Section 61 of the ESI Act, also specifically bars benefits provided under the ESI Act, where a person receives a similar benefit under the provisions of any other enactments.

16. The learned counsel for the appellant came up with a specific case that the accident had taken place in the course of employment and that the deceased was covered under the ESI and after his demise, the parents of the deceased were receiving the compensation by way of monthly pension from ESI Corporation. It was therefore contended that the bar under Section 53 and 61 of the ESI Act, will start operating. Consequently, the claim petition under Section 166 of the M.V. Act, is not sustainable.

17. The majority of the judgments that were relied upon by either side would show that the bar to maintain a claim petition under Section 166 of the M.V. Act, will apply only in a case where such a claim is made against the employer. However, when such a claim is made against a third party for his negligence and such third party is also insured, the bar under Section 53 of the ESI Act, cannot



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be forced into service. Those judgments proceed on the footing that the benefits granted under the ESI Act is different from the compensation awarded under the M.V. Act. The compensation under the M.V. Act is for the tortious liability and the benefits granted under the ESI Act, can never be a bar for granting compensation for the death caused in an accident involving a motor vehicle.

18. In short, many of the Courts have held that the claim for compensation in tort against a third party can co-exist with a claim for benefits under the ESI Act. The use of the words "any person" in Section 53 of the ESI Act cannot include within its sweep the claim in tort against the third party who is the tortfeasor in cases under Section 166 of the M.V. Act, for compensation for the loss suffered in the accident. It has been held that Section 53 merely bars the claim against the employer under any other law if the compensation is paid under the ESI Act. Considering the beneficial nature of the legislation, it has been held that the insurance coverage under the M.V. Act, is in addition to and not in substitution to the other remedies available to the aggrieved person against a stranger.

19. The learned counsel for the appellant brought to the notice of this Court the judgment passed by the Apex Court in Rajkumar Agarwal case referred supra. The Apex Court has taken into consideration various divergent views and therefore the issue has been referred to a larger Bench for an authoritative



pronouncement. The relevant portions in the order are extracted hereunder:

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5.The learned counsel for the Respondents would however, refer to the judgment passed by this Court in *Western India Plywood Ltd. vs. P. Ashokan* (1997) ACJ 1281 (SC), to contend that a two Judge Bench of this Court has taken note of the provisions in Sections 53, 61 and 2(8) of ESI Act and has held that the bar would apply. The learned counsel has also referred to the decision in the case of *National Insurance Company Ltd. v. Hamida Khatoon and Ors.* (2009) 13 SCC 361 to which the High Court has referred during the course of its order.

6.Learned counsel for the appellant has on the other hand referred to another decision of this Court by a Bench of two Hon'ble Judges in the case of *Regional Director E.S.I Corporation Vs. Francis DE Costa*, 1992 ACJ 636 (SC), wherein it is observed as hereunder:

“(17) The next contention that the Motor Vehicles Act provides the remedy for damages for an accident resulting in death of an injured person and that, therefore, the remedy under the Act cannot be availed of lacks force or substance. The general law of tort or special law in Motor Vehicles Act or workmen's Compensation Act may provide a remedy for damages. The coverage of insurance under the Act in an insured employment is in addition to but not in substitution of the above remedies and cannot on that account be denied to the employee. In *K. Bharathi Devi vs. General Insurance Corpn. Of India*, 1989 ACJ 157 (AP), the contention that the deceased contracted life insurance and due to death in air accident the appellant



received compensation and the same would be set off and no double advantage of damages under Carriage by Air Act be given was negatived.”

7. In that light having heard the learned counsel for both the sides and having noted the decisions referred to by the learned counsel for the parties, we note that though in the decisions, the Hon’ble two Judge Bench of this Court has considered the aspect and even in the case of *Western India Plywood Ltd.* (supra), the provision in Section 61 has been extracted, there is no authoritative pronouncement on the same as to whether the insurance amount paid under the ESI Act is a “similar benefit” as the compensation which is claimed in a case where there is a Motor Vehicle accident and claim subsists so as to bar the same.

8. Further, learned counsel for the appellant also contends since the Motor Vehicle Act, 1988 being a subsequent Act and the provisions in Section 163(A) and 167 begin with a *non obstante* clause, the bar should not operate against the insured employee under the ESI Act to claim compensation under the Motor Vehicles Act.

9. These contentions require an authoritative pronouncement by a larger Bench since this Bench being of a similar strength to the Bench which decided the case of *Western India Plywood Ltd.* (supra), *Hamida Khatoon* (supra) and the cases referred supra cannot enter into that aspect of the matter.

10. Hence, the Registry to place the matter before Hon’ble the Chief Justice of India to refer the matter to a Bench of an appropriate strength for authoritative pronouncement on this



aspect.

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20. The question that was referred by the two member Bench of the Apex Court is yet to be decided by a larger Bench.

21. Under normal circumstances, this Court would have awaited for an authoritative pronouncement of the larger Bench of the Apex Court since the issue involved in the present appeal also falls within the scope of consideration by the larger Bench. However, the first and second claimants, who are the parents are senior citizens and they have to be provided with some succor. In view of the same, this Court is inclined to strike a via media.

22. This Court deems it fit to permit the claimants to receive the compensation fixed by the Tribunal after deduction of the amount that has been received by the first and second claimants as pension under the ESI Act. If that course is adopted, it cannot be stated that the claimants are taking advantage of two parallel claims under two enactments - one under the M.V. Act and the other under the ESI Act. It will be more beneficial if the claimants are paid compensation fixed by the Tribunal under the M.V. Act. The pension that is paid under the ESI Act to the first and second claimants is very minimal and therefore, the claimants will not lose a large amount of compensation fixed by the Motor Accident Claims Tribunal. Once the claimants receive the compensation fixed by the Tribunal, they will not be entitled to receive any compensation under the ESI



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23. The above procedure is resorted to in view of the fact that the issue has been referred to a larger Bench by the Apex Court and it is not known as to when the authoritative pronouncement will be rendered by the Apex Court and in the meantime, the claimants, particularly the first and second claimants who are already senior citizens cannot be made to wait to receive the compensation. They may require the compensation for their livelihood.

24. In the light of the above discussion, the award passed by the Tribunal is sustained. Insofar as the quantum of compensation fixed by the Tribunal, the amount that has been received by the first and second claimants as pension from the ESI Corporation till 31.07.2024, shall be deducted. The balance shall be paid to the claimants with interest at the rate of 7.5% p.a. The appellant insurance company has already deposited the entire award amount before the Tribunal with interest pursuant to the interim order passed on 23.08.2023. In view of the same, the compensation amount that was fixed by the Tribunal, after deducting the amount paid by the ESI Corporation, can be permitted to be withdrawn by the first and second claimants. Since the claimants are paid compensation under the M.V. Act, the pension that is paid to the claimants by the ESI Corporation can be brought to an end from 01.08.2024.



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25. Before drawing the curtains, this Court wants to place on record its appreciation to Ms.D.Jeevitha learned counsel who was appointed by this Court as an amicus curiae. She prepared the case in depth and presented all the relevant judgments to assist this Court. This Court also wants to place its appreciation to the learned counsel for the appellant who also assisted this Court in the process of taking a final decision. Professional services extended by Ms.D.Jeevitha must be construed as providing legal aid to the claimants in this case. Therefore, there shall be a direction to the Tamil Nadu State Legal Services Authority, to pay a sum of Rs.5,000/- to Ms.D.Jeevitha.

26. This civil miscellaneous appeal is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

16.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
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To

Motor Accident Claims Tribunal
(I Additional District and Sessions Court, Vellore)
Vellore District.

Copy to

The Member Secretary
Tamil Nadu State Legal Services Authority
Chennai.

N. ANAND VENKATESH., J



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CMA No.1379 of 2023

16.07.2024