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CMA No.798 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.798 of 2022

- 1.Chitra
- 2.Minor Praveen
- 3.Minor Shalini
- 4.Minor Nithyasri
- 5.Minor Pugazh

...Appellants

.Vs.

- 1.The Correspondent
Prabhavathy Matriculation School
Situating at Karumandurai Village
Attur Taluk, Salem District.
- 2.The National Insurance Co.Ltd.
Rep.by its Branch Manager
Situating at K.K.Road, Manthakarai
Villupuram.

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to enhance the compensation awarded in the judgment and decree dated 10.12.2021 made in MCOP No.6 of 2019, on the file of the Third Additional District Court (Motor Accident Claims Tribunal), Kallakurichi.

For Appellants : Mr.N.Manoharan

For Respondents : Mrs.R.Sreevidhya [R2]



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JUDGMENT

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This appeal has been filed by the claimants seeking for enhancement of compensation awarded by the Third Additional District Court (Motor Accident Claims Tribunal), Kallakurichi (for short, the Tribunal below) in M.C.O.P.No.6 of 2019 dated 10.12.2021.

2.The case leading to filing of this appeal is as follows :

(i) The husband of the 1st appellant was a bus driver working in the 1st respondent school. He was driving the school bus on 11.9.2018 at about 8.15 am. At that time, the vehicle lost its control and dashed against the barrier wall and capsized. As a result, the deceased died on the spot. The claimants, who are the wife and children, filed the claim petition before the Tribunal below under Section 163A of the Motor Vehicle Act, 1988 (hereinafter referred as 'the Act') seeking for compensation.

(ii) The Tribunal below, on considering the facts and circumstances of the case and on appreciation of evidence, dealt with the petition under Section 166(1) of the Act. The Tribunal found that the accident had occurred due to the rash and negligent driving on the part of the deceased, who also happened to be the driver of the offending vehicle. Hence, the Tribunal below came to a conclusion that there is an Insurance Policy paid for the driver by the 1st respondent school and that the



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compensation can be paid under that policy. The insurance policy was also marked as Ex.P.5.

(iii) The Tribunal below fixed the compensation in the following manner:

Sl.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency	Rs.1,00,000.00
2.	Loss of consortium	Rs. 50,000.00
3.	Funeral expenses	Rs. 25,000.00
4.	Loss of love and affection to the petitioners	Rs.1,00,000.00
5.	Loss of Estate	Rs. 15,000.00
	Total	Rs.2,90,000.00

(iv) The Tribunal below directed the compensation to be paid by the 2nd respondent with interest at the rate of Rs.7.5% p.a and thereafter recover the same from the 1st respondent school on the ground that there was no valid permit for the bus, which was owned by the 1st respondent.

(v) The claimants, being aggrieved by the compensation fixed by the Tribunal, have filed this appeal before this Court seeking for enhancement of compensation.

3. Head Mr.N.Manoharan, learned counsel for the appellants and Mrs.R.Sreevidhya, learned counsel for the 2nd respondent Insurance Company.



4. This Court has carefully considered the submissions made on either side and perused the materials available on record.

5. In the considered view of this Court, the accident had taken place when the deceased was driving the vehicle belonging to the 1st respondent school in the course of his employment. Hence, the claimants are entitled for payment of compensation under the Employee's Compensation Act, 1923.

6. The option is given to the claimants either to file the application under the Employee's Compensation Act, 1923 and claim compensation or to file a claim petition before the Motor Accidents Claims Tribunal and seek for compensation.

7. Once the claimants have chosen to approach the Motor Accidents Claims Tribunal as a forum for claiming compensation, the compensation is fixed under the Act.

8. Useful reference can be made to the Division Bench judgment of this Court in the case of **Branch Manager, Vellore v. Kasiyammal and others [CMA No. 776 of 2020 dated 3.3.2023]** wherein the relevant portions are extracted as hereunder:

"7. Unable to counter the Submissions of Mr.D.Bhaskaran on the legality of it, Mr.C.Prabakaran, learned counsel appearing for the respondents/claimants would submit that since it is an admitted case of workmen, the Insurance Company would atleast be liable to pay the compensation payable under the Employees Compensation Act.



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8. Even in the counter filed before the Tribunal, the Insurance Company accepted its liability to pay compensation under the Employees Compensation Act. If calculated under the Employees Compensation Act the compensation payable would be as follows:

Name of the Deceased : Mathiyazhagan

Age of the Deceased : 38 years

Avocation : Lorry Driver

Date of accident : 03.02.2015

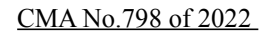
Factor for age 38 years : 189.56

Wages-ceiling under
Employees Compensation Act: Rs.8,000/- pm
Compensation:

50
---- x 189.56 x 8000 = Rs.7,63,240/-
100

Interest : 12%"

9. This Court is resorting to fixing the compensation under the Employee's Compensation Act, 1923 since the Tribunal below has given a finding to the effect that the deceased is the tort-feasor and only due to his negligence, the accident had taken place. If such a finding is rendered, it will be too difficult to grant compensation even under Section 163A of the Act. Therefore, considering the fact that the deceased has left behind the wife and four minor children as dependents, this Court is inclined to apply the methodology under the Employee's Compensation Act and fix the compensation in the following manner:



"Rs.8,000/- x 197.06 x 50/100 = 7,88,240/-"

11. In the result, there shall be a direction to the 2nd respondent to pay a total compensation of Rs.7,93,240/- with interest at the rate of 12% p.a. from the date of filing of the petition till the date of realization. The amount that has already been deposited shall be given credit to and the balance amount to the extent enhanced in this judgment namely Rs.5,03,240/- shall be deposited together with interest at the rate of 12% per annum from the date of petition within a period of four weeks from the date of receipt of copy of the order. After making such deposit, it is left open to the 2nd respondent to recover the amount from the 1st respondent. The manner, in which the compensation has to be paid, has already been determined by the Tribunal and the same apportionment shall be followed even with respect to the payment of the enhanced compensation amount fixed by this Court in this judgment.



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12. In the result, this civil miscellaneous appeal is disposed of with the above directions. No costs.

04.04.2024

Index : Yes
Speaking Order
Neutral citation : Yes
KP

To

Motor Accident Claims Tribunal Judge/
third Additional District Court, Kallakurichi.



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N. ANAND VENKATESH., J

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