IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment of Reserved on :24.07.2023

Judgement of Delivered on :23.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.303 of 2018

1.Sivagami
W/o (Late) Rajiv Gandhi

2.Minor Dhivya
D/o(Late) Rajiv Gandhi

3.Minor Anushka
D/o (Late) Rajiv Gandhi
(Minor appellants 2 & 3 represented by
their mother Sivagami as guardian as
well as next friend)

4.Kannan

5.Kasthuri ... Appellants

/versus/

1.Umadevi

2.The New India Assurance Company Limited,
Tiruvannamalai,
Tiruvannamalai Taluk & District. ... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 21.02.2017 made in M.C.O.P.No.110 of 2015 on the file of the Motor Accident Claims Tribunal, Special District Judge, Villupuram.

For Appellant : Mr.S.Raja Ravivara

For R1 : Notice dispensed with

For R2 : Mrs.R.Sree Vidhya

JUDGMENT

The appellate herein filed a claim petition in M.C.O.P.No.110 of 2015 before the Motor Accident Claims Tribunal/Special District Judge, Villupuram, against the respondents. The Tribunal has dismissed the claim petition. Challenging the same, the appellants/claimants have filed the present appeal before this Court.

2.The case of the appellants/claimants is that, the first petitioner/first claimant is the wife of the deceased Rajiv Gandhi; the second and third petitioners/2nd and 3rd claimants are the minor daughters of the deceased Rajiv Gandhi; and the fourth and fifth petitioners/4th and 5th claimants are the father and mother of the deceased Rajiv Gandhi. On 22.11.2013 at about 11.30 p.m., while the deceased Rajiv Gandhi was travelling in a goods lorry vehicle bearing Reg.No.TN 21L 7788 as a Load Man for loading and unloading poultry foods, the driver of the lorry drove the lorry in a rash and negligent manner and dashed against a Tamarind tree on the Sethupattu to Gingee Road near Adhi-Dravidar Student Welfare Hostel at Devanur Village, thereby caused the accident. Due to the accident, the deceased Rajiv Gandhi sustained grievous injuries on his head and vital parts of his body and he died on the spot. A case was registered in Crime No.441 of 2013 on the file of the Valathi Police Station against the driver of the lorry. The first respondent is the owner of the lorry. The first respondent insured the said lorry with the second respondent. As per the claim petition, the insurer of the said lorry i.e the second respondent is liable to pay the compensation. At the time of the accident, the deceased Rajiv Gandhi was earning a sum of Rs.20,000/- per month and he is the sole bread winner of the family. Therefore, the respondents have to jointly pay the compensation of Rs.25,00,000/- to the claimants.

3.The first respondent remained ex-parte before the Tribunal.

4.The second respondent filed a counter-affidavit stating that the accident had occurred due to the rash and negligent driving of the driver of the lorry himself. Since the driver of the lorry himself was a tort-feasor, the second respondent is not liable to pay any compensation. The deceased Rajiv Gandhi was only travelling in the lorry as an unauthorized passenger along with the others and the owner of the vehicle violated the policy conditions and therefore, the second respondent is not liable to pay any compensation. Even otherwise, the policy covers only for the third party; the accident is caused due to the negligence on the part of the driver; the driver of the lorry himself dashed against the road side Tamarind tree; and the insurance is not covered for the same; the Insurance Company is not liable to pay the compensation. If at all the deceased was the Load man, he is entitled to get the compensation only from the owner of the vehicle, since the accident had occurred due to the negligence on the part of the driver. Therefore, the petitioners are not entitled to get the compensation from the second respondent/Insurance Company.

5. In order to substantiate their claim, on the side of the appellants/claimants before the Tribunal, two witnesses were examined as PW-1 and PW-2 and 10 documents were marked as Ex.P1 to Ex.P10. On the side of the second respondent, one witness was examined as RW-1 and no document was marked.

6. Considering the oral and documentary evidence, the Tribunal dismissed the claim petition stating that the accident had occurred only due to the rash and negligent driving of the driver of the lorry which belongs to the first respondent himself and therefore, the Insurance Company is not liable to pay the compensation. Though the deceased was claimed to be a load man, the accident had occurred only due to the rash and negligent driving of the driver of the vehicle. Therefore, the owner of the vehicle alone is liable to pay the compensation. Further, it is not a road accident and The road accident is of the other third party vehicle; the driver himself dashed the road side Tamarind tree on his own negligence. However, the deceased was working as the load man and he claims compensation under the Workmen Compensation Act, whereas, the Tribunal cannot invoke the

claim petition under the Workmen Compensation Act. Hence, the claim petition filed under the Motor Vehicles Act was dismissed. Challenging the same, the claimants/appellants filed the present Appeal.

7. The accident is not in dispute; the deceased died due to the accident, is also not in dispute; the case was registered only against the driver of the lorry bearing Reg.No.TN 21 L 7788 is also not in dispute; and the accident had occurred due to the rash and negligent driving of the driver of the first respondent, which is also not in dispute. The main defence taken by the second respondent that since the driver of the offending lorry himself was a tort-feasor, the insurance company is not liable to pay the compensation and the deceased Rajiv Gandhi is an occupant of the said lorry and therefore, he is not the third party. Therefore, the Insurance Policy is not covered and he can claim the compensation only against the owner of the vehicle and at the best, he can claim the compensation from the Commissioner under the Workmen's Compensation Act, as amended by the Employees Compensation Act, 1923 and under the Employees Compensation Act, the Commissioner alone is the competent authority to hear the claim the petition claiming the compensation under the Employees'

Compensation Act and the award the compensation.

8. Admittedly, the deceased was working as a Load man. The evidence of PW-1 and PW-2 clearly shows that the deceased was working at the time of the accident as a load man and the goods lorry transported the poultry goods and the first respondent has not appeared before the Tribunal and he has not denied that the deceased had not worked as a load man and from the evidence of PW-1, who is the wife of the deceased and PW-2 is the co-worker, who has clearly stated that the deceased was working as a Load man at the time of the accident. Either the first respondent or the second respondent have not filed any appeal against the findings and now the claimants alone have filed the present appeal. Challenging the findings of the Tribunal and regarding the same, the Tribunal has no jurisdiction to pass the award and the claimants can approach the Commissioner under The Employees' Compensation Act and this Court as the appellate Court, is duty bound to re-appreciate the evidence and the findings of the Tribunal and to pass appropriate orders.

9. Admittedly, in this case, the first respondent has not appeared

before the Tribunal and he has not filed any counter and not denied the employer and employee relationship. From the evidence of PW-1 and PW-2, it is clear that the deceased was working as a Load man in the lorry at the time of the accident and the Tribunal has also given a finding that the claimants can claim compensation before the Commissioner under the Workmen's Compensation Act. The first respondent has not challenged the findings of the Tribunal. Now, the second respondent challenges the findings of the Tribunal before this Court and even assuming that the driver of the lorry was a tort-feasor, the Insurance Company is not liable to pay the compensation. The workman sustained injury during the course of employment. Therefore, as an employee, the first respondent is liable to pay the compensation.

10. The learned counsel for the appellants has placed reliance on the judgment of the Hon'ble Division Bench of this Court in the case of *The Oriental Insurance Company Ltd., 139, Eswaran Koil Street, Pondy v. Kaliya Pillai and others, reported in MANU/TN/2046/2002,* wherein the Hon'be Division Bench held that if the Tribunal finds that the claimants are not entitled to get the compensation under the Motor Vehicles Act, and they

can claim the compensation only under the Workmen's Commission Act the Tribunal can itself award the compensation. It need not dismiss the claim petition and direct the claimants to approach the Commissioner under the Worksmen's Compensation Act.

11. On a perusal of the judgment cited by the learned counsel appearing for the appellants, it is seen that the Hon'ble Division Bench of this Court referred a decision of the Hon'le Supreme Court and held that, while dealing with the appeal, if the appellate Court finds that the Tribunal has committed error and the claimants are only entitled to get the compensation before the Commissioner under the Employees' Compensation Act, the Tribunal itself can award the compensation, as per the Commissioner under the Employees' Compensation Act and not under the Motor Vehicles Act.

12. The relevant portion of the judgment in *the Oriental Insurance Company Ltd., 139, Eswaran Koil Street, Pondy v. Kaliya Pillai and others reported in MANU/TN/2046/2002,* is extracted as below:-

> "*7. As per Section 3 of the Workmen's*

Compensation Act, undoubtedly the employer is liable to pay compensation in respect of personal injury or death caused to a workman by accident arising out of and in the course of his employment in accordance with the provisions of Chapter II. Section 4 provides how the amount of compensation is to be determined. As per sub-section (1) of Section 4A, compensation under section 4 shall be paid as soon as it falls due. It is not disputed that for arriving at a just compensation in case of permanent disablement and death the factors that are provided under Schedule IV of the Workmen's Compensation Act have to be taken note of. Though the claimants have produced salary certificate-Ex.P-4, the owner of the tractor who issued the said certificate though he is a party (first respondent in O.P. No. 171/98) has not chosen to examine himself to substantiate the contents of Ex.P-4. However, in the light of Ex.P-6 Driving licence to drive tractor and trailer and considering the fact that the deceased died while driving the tractor, it would be proper to hold that he would have earned Rs.2000/- per month as a driver of a tractor. By applying the formula prescribed under Schedule IV, we fix the compensation of Rs.2,16,000/-. The procedure and method adopted above has not been disputed.

8. Another question to be considered is whether the claimants are entitled to interest for the said compensation and if so, from what date? Learned counsel appearing for the appellant by drawing our attention to a decision of the Apex Court in Ved Prakash Garg v. Premi Devi reported in MANU/SC/0956/1997, would contend that the payment of interest would arise only on determination of compensation under the provisions of Workmen's Compensation Act and not either from the date of petition or from the date of accident. Similar question was considered by the Supreme Court in this decision. After referring to the relevant provisions with regard to "interest" and "default" under the Workmen's Compensation Act, the Supreme Court has observed that, (para 14) "14. On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the insurance companies will be liable to make good not only the principal amounts *of compensation payable by insured employers but also interest therein, if ordered by the Commissioner to be paid by the insured employers. Reason for this conclusion is obvious. As we have noted earlier the liability to pay compensation under the Workmen's Compensation Act gets foisted on the employer provided it is shown that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. Such an accident is also covered by the statutory coverage contemplated by Section 147 of the Motor Vehicles Act read with the identical provisions under the very contracts of insurance reflected by the Policy which would make the insurance company liable to cover all such claims for compensation for which statutory liability is imposed on the employer under Section 3 read with Section 4A of the Compensation Act. All these provisions represent a well-knit scheme for computing the statutory liability of the employers in cases of such accidents to their workmen. As we have seen earlier while discussing the scheme of Section 4A of the Compensation Act the legislative intent is clearly discernible that once compensation falls due and within one month it is not paid by the employer then as per Section 4A(3)(a) interest at the permissible rate gets added to the said principal amount of compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose bread-winner might have either been seriously injured or might have lost his life. Thus so far as interest is concerned it is almost automatic once default, on the part of the employer in paying the compensation due, takes place beyond the permissible limit of one month. No element of penalty is involved therein..."*

By heavily relying on the above passage and Section 4A(3), learned counsel for the insurance company would contend that there cannot be any direction for payment of interest without determining the amount of compensation and giving a month's time. According to him, only in the case of default and non-payment of amount within the prescribed time, the claimants are entitled interest. After considering the object and scheme *of the Act and sections 3, 4, 4A of the Workmen's Compensation Act, we are unable to accept the said contention for the following reasons. In the very same decision, namely, MANU/SC/0956/1997 (cited supra), after holding so, in the penultimate paragraph, Their Lordships have held, (para 19)."19. As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4A sub-section (3)(a) of the Companies Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4A (3) (b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone."*

It is further seen from the last paragraph that after setting aside the liability to pay the penalty imposed on the insured, they directed the insurance company to pay compensation as fixed by the workmen commissioner with interest at 6 per cent per annum thereon from the date of the accident till the date of payment to the claimants (vide para 20).

9. It is also relevant to refer a 4 Judge Bench decision of the Hon'ble Supreme Court in Pratab Narain Singh Deo v. Shrinivas Sabata, reported in MANU/SC/0021/1975 : 1976 A.C.J. 141 wherein Their Lordships have considered the very same question namely payment of "interest" and "penalty" under the Workmen's Compensation Act. In para 7, Their Lordships have held thus:

"7....The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the

compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary. "

The above conclusion of Their Lordships makes it clear that the employer or person liable to pay compensation need not wait till formal determination by the Commissioner under the Workmen's Compensation Act. On the other hand, we hold that the employer or any other person is liable to pay compensation as soon as personal injury was caused or death occasioned in the course of employment. The provisions in the Workmen's Compensation Act referred to above would clearly show that the interest shall be paid to the worker or his dependent as the case may be and the penalty shall be credited to the State Government. In other words, on the delaying of payment of compensation on unjustifiable ground, the employer does not earn any penalty, if the claimant is being compensated with higher rate of interest. The term "fell due" in sub-section (1) of Section 4A is to mean the time when the right to claim compensation accrued due. The employee or his dependents would be gained by means of interest for the amount due as well as the penalty for the delay. As stated earlier, the interest has to be paid to the employee or to his dependent from one month after the date on which it was actually fell due and the penalty amount has to be credited to the account of the State Government. We hold that the interest would accrue 30 days after the date of accident and not from the date of quantification as argued by the learned counsel for the insurance company. In this regard, it is relevant to refer a Division Bench decision of the Kerala High Court in Oriental Insurance Company Limited v. Abdul Nazar, reported in 1997 L.I.C. 891. The conclusion arrived at therein is as follows: (para 10)

"10. Once it is found that the amount of compensation falls due on the date of the accident, it has necessarily to be held that the defaulting employer shall pay interest on the compensation from the date of the accident. The wording of the Section is very clear that

mere failure to pay compensation would saddle the employer with the liability to pay interest unlike in the case of penalty. Employer will be liable to pay penalty only in cases where the Commissioner is satisfied that there was no justification for the delay. The contumacious conduct on the part of the employer is not making the payment has relevance only in the case of his liability to pay penalty. As far as interest is concerned, there is no requirement to prove that the employer was not honestly contesting his liability. Ultimately, when it is found that he has liability to pay compensation by the Commissioner for Workmen's Compensation, the workman has to be compensated for not having the advantage of receipt of the amount of compensation on the date on which the accident happened. On the other hand, it has to be noted that the employer was retaining the amount with him all the time when the proceedings were going on. The fact that he has been granted one month's time from the date on which compensation fell due to make the payment would not in any way postpone the date from which interest w3ould start running. Therefore, we are of the view that the liability to pay interest would run from the date on which the right to receive compensation accrue in favour of the workman, namely, the date of the accident and not when orders are issued by the Commissioner for Wokrmen's Compensation. The above view of ours is fortified by decisions of several other High Courts, vide THE MUNICIPAL COMMISSIONER, BARODA v. PATEL ENGINEERING CO. LTD., 1976 ACJ 104, JAYAMMA v. EXECUTIVE ENGINEER, P.W.D. MADHUGIRI, MANU/KA/0179/1981 : 1982 ACJ 361 : 1982 LIC 61 (Kant), MADAN MOHAN VERMA v. MOHAN LAL, 1983 ACJ 231. Even though the specific question as such was not raised in MANU/KE/0199/1984 : 1984 ACJ 630 supra, Bench of this Court had also held that interest at 6% p.a. shall be paid from the date of the accident till the date of payment."

As stated earlier, the Workmen's Compensation Act, being a beneficial legislation, considering the object and scheme of the Act, particularly after insertion of section 4A, we hold that interest for the compensation amount would accrue 30 days after the date of accident and not from the date of quantification. To *make it clear that we are of the view that the liability to pay interest would run from the date on which the right to receive compensation accrues in favour of the workman namely the date of the accident and not on the date of issuance of orders by the Commissioner for Workmen's compensation."*

13. Therefore, the above judgment of the Division Bench of this Court referred to by the learned counsel appearing for the appellants, is squarely applicable to the facts of the present case. Therefore, the findings given by the Tribunal are set aside and the first respondent has not denied the the relationship of the employer and employee under The Employee's Compensation Act, 1923, and the death of the deceased was due to the accident of the driver of the lorry and he sustained the injury during the course of employment.

14. However, as far as the quantum of compensation is concerned, though the appellants have stated that the deceased was earning Rs.20,000/- per month, but no evidence or materials areproduced regarding the salary or wages or income of the deceased. However, it is admitted that the deceased was travelling as a Load man at the time of the accident. But, it is not believable that a Load man was getting salary of Rs.20,000/- per

month. Therefore, as a Load man, he could have been earned from the employer only a sum of Rs.3,000/- per month as salary and as per Section 4 of The Employee's Compensation Act, 1923, the quantum has to be calculated.

15. Section 4 of The Employee's Compensation Act, 1923 reads as below:-

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

(a)Where death results from :an amount equal to (fifty percent) the injury of the monthly wags of the deceased (employee) multiplied by the relevant factor.
(or)
an amount of (one lakh and twenty thousand rupees, wherever is more;

(b)Where permanent total disablement results from the injury :an amount equal to (sixty percent) 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 notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b)]

16. As per the above mentioned Section 4 of The Employee's Compensation Act, 1923, the quantum of compensation is to be calculated. Though the age proof has not been produced, as per the legal heir certificate of the deceased, it is mentioned as 28 years. Therefore, the factor, as per the Act, is 211.79. The compensation is calculated as below:-

Income of the deceased	=Rs.3,000/- per month
Relevant factor as per the age of the deceased 28 years	=211.79
3000x50/100x211.79	=3,17,685.00
Total	**=3,17,685/-**

17.In the result, ***the Civil Miscellaneous Appeal is partly allowed*** and a sum of **Rs.3,17,685/-** is awarded as compensation with interest at the rate of 12% p.a. from the date of petition, till the date of realisation. In the award amount, the first appellant/mother is entitled to 25% of the award amount (i.e.) Rs.79,421.25/-; the 4th and 5th appellants are jointly entitled to 25% of the award amount (i.e) Rs.79,421.25/-each; the 2nd and 3rd appellants/minor daughters are entitled to each 25% of the award amount (i.e.) Rs.79,421.25/-each. The second respondent/Insurance Company is directed to deposit the above award amount with interest at the rate of 12% per annum from the date of petition till the date of realisation, within a period of eight weeks, from the date of receipt of a copy of this judgment. On such deposit, the appellants 1,4 & 5/ claimants 1,4 & 5 are permitted to withdraw their respective share amounts along with interest. As far as the share of the second and third appellants /minor daughters is concerned, their share amounts shall be deposited in any one of the Nationalised bank, till they attain majority. The first appellant/mother of the minors is permitted to withdraw the interest once in three months for the welfare of the children. No costs.

23.02.2024

Index :yes/no
Speaking/Non-speaking order
Neutral Citation:yes/no
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To
1.The Motor Accident Claims Tribunal, Special District Judge, Villupuram.
2.The Section Officer, V.R.Section, High Court, Madras.

P.VELMURUGAN,J.

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delivery judgment made in
C.M.A.No.303 of 2018

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