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C.M.A.No.4366 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.4366 of 2019

and

CMP.No.24870 of 2019

M/s. Bajaj Allianz General Insurance Co. Ltd.,
First Floor, No.68, S.L.S. Towers,
Cherry Road, Hasthampatti, Salem – 636 007.

...Appellant

Vs.

1. Tamil Selvi
2. Subhasri Minor
2nd Respondent Minor rep. by Mother and NF 1st respondent
3. Rajakumari
4. Annamalai
5. Geethanjali
6. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.12, Ramakrishnan Road, Salem – 636 007.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.785



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of 2013 dated 27.03.2018 on the file of the Motor Accidents Claims Tribunal,
Special District Court, Salem.

For Appellant : Ms.Harini
for M/s.M.B.Gopalan Associates

For Respondents : Ms.L.Manisha
for Mr.S.P.Yuvaraj, for R1 – to R4
: Mr.D.Nitin, for R6
: Notice not ready, for R5

JUDGEMENT

Challenging the judgment and decree dated 27.03.2018 made in MCOP.No.785 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem, the appellant is before this Court.

2. It is the case of the claimants that, on 15.12.2012 at about 07.15 hours, when the deceased Vijaykanth was on duty and driving the EICHER Van bearing Regn.No.TN-31-AD-1464 owned by the 5th respondent insured with the appellant insurance company and was proceeding on the Salem to Attur Main Road, near Periakrishnapuram bus stop, the 6th respondent transport corporation bus bearing Regn.No.TN-30-N-0965 driven by its driver came in



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the opposite direction in a rash and negligent manner and dashed against the above said Eicher van, due to which, the deceased sustained grievous injuries and succumbed to the same. Thereby, the respondents 1 to 4/ claimants, who are the dependents of the deceased filed a claim petition claiming a compensation of Rs.20,00,000/-. Before the tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked exhibits P.1 to P.5 and X.7 and on the side of the appellant and the respondents therein, four witnesses viz., R.W.1 to R.W.4 were examined and exhibits R.1 to R.2 and X.1 to X.6 were marked. After trial, the tribunal, though came to a conclusion that the accident had happened due to the rash and negligent driving on the part of the deceased/the driver of the Eicher van, however, awarded a sum of Rs.14,14,000/- towards compensation for the death of the deceased Vijaykanth payable by the appellant-insurer in favour of the respondents 1 to 4/claimants. Challenging the same, the appellant has come up with this appeal.

3. Learned counsel for the appellant-insurance company submitted that the deceased is the tortfeasor and the above said accident happened solely due to the rash and negligent driving on the part of the deceased and the same is



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evident from the FIR filed as against the deceased, which was marked as Ex.P.1 before the tribunal and the same was also clearly demonstrated before the tribunal through an individual eye witness who was examined as P.W.2 before the tribunal. When the ocular testimony has clearly pointed the finger on the deceased for rash and negligent driving and same was also accepted by the tribunal, necessarily the appellant ought to have been exonerated. Instead, the tribunal had awarded a compensation of Rs.14,14,000/- for the death of the deceased and further directed the appellant to pay the same in favour of the claimants, which is wholly unsustainable. Learned counsel further submitted that, for maintaining a claim u/s 166 of the MV Act, the deceased has to be a third party. In the present case, the deceased had stepped into the shoes of the owner of the vehicle/the 5th respondent and, therefore, he cannot be termed to be a third party to have his claim covered under Section 166 of the MV Act. Without considering these factual and legal aspects, the Tribunal has passed award, which is not sustainable and the same has to necessarily be interfered with. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing on behalf of the respondents



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1 to 4/claimants submitted that, though the deceased was not the owner the vehicle and though it is presumed without admitting that the deceased had lost his life due to his rash and negligent driving, even then, the claimants are entitled to claim compensation, since, the above said accident happened during the course of the employment under the 5th respondent and thereby, the claimants are entitled to claim compensation under the Employee's Compensation Act and this Court is well within its power to convert the claim made by the respondents 1 to 4/claimants under Section 166 of the Motor Vehicle Act into a claim under the Employee's Compensation Act. In support of her contention, the learned counsel relied upon the decision of the Hon'ble Division Bench of this Court in the case of ***The Oriental Insurance Co. Ltd. Vs. Krishnan and Ors*** reported in ***2003-2-L.W.73***.

5. On the above said contentions, heard the learned counsel appearing on behalf of the 6th respondent and perused the materials available on record.

6. The factum and manner of the accident is not in dispute and therefore, this Court is not entering into the said aspect. The major issue arises for



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consideration in the present appeal is *whether the claimants are entitled to claim compensation under the Employee's Compensation Act? and whether this Court has power to convert the Motor Vehicle claim into Employee's Compensation claim?*

7. In this regard, the decision of the Division Bench of this Court in the case of **Krishnan's case** (*supra*) relied upon by the learned counsel for the respondents 1 to 4 enures in favour of the claimants, wherein the Division Bench of this Court has held hereunder:

*“5. Counsel also invited our attention to a judgment of this Court in the case of **Oriental Insurance Co. Ltd. vs. Kalliya Pillai and others**, MANU/TN/2046/2002 : 2002 (4) CTC 469, where the Court took the view that even the liability under Workmen's Compensation Act, 1923 may be determined by this Court having regard to the extent of the coverage under the policy after it was found that the claim made before the Tribunal under the Motor Vehicles Act is not maintainable. The Insurer appellant does not dispute the fact that the policy covers the liability of the insured to his employee under the Workmen's Compensation Act. Under Section 3 of that Act negligence of the workmen who dies in an accident arising out of and in the course of his employment does not absolve the employer of the obligation to pay compensation in accordance with the provisions of that Act.*



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6. Having regard to this position, we deem it just to hold that the Insurer is liable to pay compensation payable in accordance with the provisions of the Workmen's Compensation Act. If the amount of such compensation is higher than the amount of the 'No fault liability' under Section 140 of the Motor Vehicles Act, Insurer will not be liable to make the payment under Section 140(5) of the Motor Vehicles Act. If the amount of the no fault liability is higher, then no amount need be paid under the Workmen's Compensation Act, as the claimant is entitled to the higher of the two amounts, but not both. The order under appeal which directs payment of Rs.2.00 lakhs to the parents of the deceased on the reasoning that though the negligent employee could not have claimed compensation, nevertheless his parents can, is set aside.

7. Appeal is allowed in part subject however to the directions to the appellant / relief granted to the claimants, under paragraph-6 above.”

8. Further, in the present case, the employer-employee relationship in between the 5th respondent and the deceased is not disputed by the parties. Such being the position, there could be no embargo for this Court to consider the claim filed by the claimants, who are the dependents of the deceased workmen under the Employee's Compensation Act,1923 as held by the Division Bench of this Court in *Krishnan's case*.



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9. In the light of the aforesaid decision, which applies squarely to the facts of this case, the assessment of the compensation by the Tribunal under Section 166 of the Motor Vehicles Act is erroneous as the assessment can be made only under the provisions of the Employee's Compensation Act 1923.

10. Assessing the compensation under the Employee's Compensation Act in respect of the accident that took place on 15.12.2012, fixing the age of the deceased as 31 years, the relevant factor to be adopted is 205.95 and the maximum monthly wages allowed for calculation under the Act being Rs.8,000/-, as no material has been filed to establish the monthly wages of the deceased. Therefore, fixing Rs.8,000/- as the monthly wages, as fixed by the appropriate, the compensation under the head loss of income is arrived at : $50/100 \times 8000 \times 205.95 = \text{Rs.8,23,800/-}$. A sum of Rs.5,000/- is awarded towards funeral expenses.

11. Accordingly, the compensation awarded by the Tribunal under the Motor Vehicles Act is set aside and instead compensation in a sum of



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Rs.8,28,800/- is awarded to the claimants under the Employee's Compensation Act.

12. Accordingly, the appeal stands allowed in part and the impugned award is modified by reducing the compensation from **Rs.14,14,000/-** to **Rs.8,28,800/-**. The appellant/Insurance company is directed to deposit the said amount to the credit of MCOP.No.785 of 2013 along with interest at the rate of 12% per annum from the date of claim petition till the date of deposit, less, the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. In the above compensation amount, the 1st respondent is entitled to a sum of Rs.4,28,800/- and the 2nd respondent is entitled to a sum of Rs.2,00,000/- and the 3rd and 4th respondents are entitled to a sum of Rs.1,00,000/- each. On such deposit being made, the Tribunal is directed to transfer the compensation amount apportioned in respect of the respondents 1, 3 & 4 directly to their bank accounts through RTGS within a period of two (2) weeks thereafter. Insofar as the apportionment of compensation in favour of the minor 2nd respondent is concerned, the Tribunal



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is directed to invest the same in an interest bearing fixed deposit initially for a period of three years to be renewed till she attains majority and the quarterly interest accrued thereon shall be paid to the 1st respondent/mother of the minor claimant for being used for the welfare of the minor 2nd respondents by the guardian. The appellant-Insurance Company is permitted to withdraw the excess amount if any already deposited by them. No costs. Consequently, the connected miscellaneous petition is closed.

12.11.2024

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

To

1. The Motor Accidents Claims Tribunal,
Special District Court,
Salem.
2. The Section Officer,
VR Section,
High Court of Madras.



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