



C.M.A.(MD) No.1070 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2024

CORAM

**THE HON'BLE MR.JUSTICE SUNDER MOHAN**

**C.M.A.(MD) No.1070 of 2010**

The Manager,  
Iffco Tokyo General Insurance Company Ltd.,  
III Floor, Thulasi Chamber,  
T.V.Sami Road (West),  
Coimbatore.

... Appellant

Vs.

1.Azeez Beevi  
W/o.Abdul Kadar

2.Mohamed Yusuf  
S/o.Vavamaideen

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the fair and decretal order dated 09.03.2010 made in M.C.O.P.No.132 of 2006 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Court), Tenkasi.

For Appellant : Mr.S.Srinivasa Ragavan

For R1 : Mr.K.Pragadesh Ganapathy  
for Mr.R.Subramanian

For R2 : No appearance

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C.M.A.(MD) No.1070 of 2010

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## **J U D G M E N T**

The instant appeal has been filed by the Insurance Company challenging the award of the Tribunal on the ground that the Tribunal ought not to have allowed the claim petition filed under the provisions of the Motor Vehicles Act, 1988.

2. The first respondent had filed a claim petition before the Tribunal, stating that the deceased was employed as a driver under the second respondent and that on 28.04.2006, at about 07:00 a.m., while the deceased was driving the car bearing registration No.TN-76-A-7871, which belonged to the second respondent and was insured with the appellant, the vehicle went out of control and collided with a roadside tree, as a result of which the deceased sustained fatal injuries.

3. The second respondent herein, the owner of the insured vehicle, remained *ex parte* before the Tribunal.

4. The appellant had filed a counter before the Tribunal, stating that since the deceased himself was the tortfeasor, the owner, and



C.M.A.(MD) No.1070 of 2010

consequently the appellant, is not liable to pay any compensation under the provisions of the Motor Vehicles Act, 1988.

5. Before the Tribunal, the first respondent examined herself as P.W.1 and marked Exs.P1 to P4, and the appellant examined R.W.1 and marked Exs.R1 and R2.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident arose out of the use of a motor vehicle, and therefore, the appellant is liable to pay compensation under the provisions of the Motor Vehicles Act, 1988.

7. The learned counsel for the appellant submitted that the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, is not maintainable, as the deceased himself was the tortfeasor, and that since the deceased was employed under the second respondent, the Tribunal erred in allowing the claim petition filed under the Motor Vehicles Act, 1988, and therefore prayed for setting aside the award of the Tribunal.



C.M.A.(MD) No.1070 of 2010

WEB COPY 8. The learned counsel for the first respondent, per contra, submitted that even if the claim petition under the provisions of the Motor Vehicles Act, 1988 was not maintainable, since the deceased was employed under the second respondent, who was the insured, the appellant is liable to pay compensation under the Workmen's Compensation Act, 1923 and relied upon the judgment of this Court in the case of *M/s.United India Insurance Company Limited Vs. K.Shahidha Banu and others*, dated 15.03.2022 passed in *C.M.A.No.2723 of 2019*, wherein, in similar circumstances, this Court in the appeal filed by the Insurance Company challenging the award under the Motor Vehicles Act, 1988 had awarded the compensation under the Workmen's Compensation Act, 1923, since the deceased was employed under the insured.

9. The only point for consideration in the instant appeal is whether this Court, in an appeal filed challenging the award of the Tribunal passed in the claim petition filed under the provisions of the Motor Vehicles Act, 1988, can invoke the provisions of the Workmen's Compensation Act, 1923, to award compensation.



C.M.A.(MD) No.1070 of 2010

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10. Concededly, the claim petition before the Tribunal under the provisions of the Motor Vehicles Act, 1988, was not maintainable, as the deceased himself was a tortfeasor. However, the deceased was employed under the second respondent herein, which is not in dispute. Therefore, this Court can award the compensation by applying the provisions of the Workmen's Compensation Act, 1923, as the policy covers the liability of the insured as an employer. This Court, in ***K.Shahidha Banu's*** case cited supra, held that even if the claim petition under the Motor Vehicles Act, 1988, is not maintainable, this Court can pass an award as if the claim is one under the Workmen's Compensation Act, 1923, if the conditions invoking the Act are satisfied. Since the condition, namely, the deceased was employed under the second respondent, is not in dispute, this Court is of the view that the award can be passed as if the claim is one under the Workmen's Compensation Act, 1923.

11. As regards the quantum of compensation, the deceased was 25 years old at the time of the accident. Since the claimant had admitted that the income of the deceased was Rs.6,000/- per month, the said income is adopted for computation of compensation. Since the age of the deceased



C.M.A.(MD) No.1070 of 2010

was 25 years, the factor applicable is 216.91. Thus, the compensation under the head 'loss of dependency' would be Rs.6,50,730/- [Rs.6,000/- x 50% x 216.91]. The claimant is entitled to a sum of Rs.5,000/- under the head 'funeral expenses'. The total compensation payable to the first respondent/claimant would be Rs.6,55,730/- [Rs.6,50,730/- + Rs.5,000/-].

12. In the result, the Judgment and Decree dated 09.03.2010 made in M.C.O.P.No.132 of 2006 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Court), Tenkasi, granting compensation of Rs.2,79,000/- to the first respondent/claimant, is set aside, and a sum of Rs.6,55,730/- is awarded under the provisions of the Workmen's Compensation Act, 1923.

13. The appellant, Insurance Company, is directed to deposit the aforesaid compensation of Rs.6,55,730/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization, after deducting the amount already deposited, if any, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this Judgment.



C.M.A.(MD) No.1070 of 2010

14. On such deposit, the first respondent/claimant is permitted to withdraw the same along with interest, less the amount already withdrawn, if any, by filing suitable application before the Tribunal.

15. The first respondent/claimant is directed to pay the court fee for the modified amount within a period of four weeks from the date of receipt of a copy of this Judgment.

16. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs.

21.10.2024

Index: Yes/ No  
Neutral Citation: Yes / No  
Speaking Order/Non-Speaking Order

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Copy To:

- 1.The Additional Subordinate Judge,  
Motor Accident Claims Tribunal,  
Tenkasi, Tirunelveli District.
- 2.The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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C.M.A.(MD) No.1070 of 2010

**SUNDER MOHAN, J.**

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C.M.A.(MD) No.1070 of 2010

21.10.2024