



C.M.A.(MD).No.455 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 02.08.2024

DELIVERED ON : 19.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.455 of 2022
and C.M.P.(MD).Nos.4049 of 2022 and 3008 of 2023

The Branch Manager,
National Insurance Company Limited,
Division Office, JK Plaza, First Floor,
T.S.No.3622/27 Santhanathapuram 5th Street,
Pudukkottai Town. ... Appellant/2nd Respondent

Vs.

- 1.Bhuvaneswari
- 2.Minor Subasri
- 3.Minor.Srikaruni ... 1 to 3 Respondents/Petitioners
(Respondents 2 and 3 are represented through their guardian and mother
1st respondent Bhuvaneswari)
- 4.J.Mohammed Ansar ... 4th Respondent/1st Respondent
- 5.Ki.Valayapathi ... 5th respondent/3rd Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order dated 20.10.2021 made in M.C.O.P.No.391 of 2018 on the file of the Motor Accident Claims Tribunal, Additional District Court, Pudukkottai.



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For Appellant : Mr.Mr.J.S.Murali
For Respondents : Mr.K.C.Maniyarasu for R1 to R3
No Appearance for R4 & R5

JUDGMENT

This appeal has been directed against the fair and decreetal order, dated 20.10.2021 made in M.C.O.P.No.391 of 2018 on the file of the Motor Accident Claims Tribunal, Additional District Court, Pudukkottai.

2.The facts in brief:

On 31.07.2016 at about 12.00 p.m., the deceased Malaiyappan was driving the TATA ACE NIP vehicle bearing registration No.TN 55 AE 6069, which belongs to the first respondent in the main petition, on the ECR Road in south to north direction. The first respondent's vehicle's driver lost the control and hit the vehicle on the side of the fence located in south to west direction. As a result of which, Malaiyappan sustained grievous injuries and taken to the Government hospital, Pudukkottai. Later to Thanjavur Medical College Hospital, Thanjavur. But, he died on 01.08.2016 without responding the treatment.



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3.It is stated that he was earning Rs.700/- per day and monthly Rs.21,000/-. He was aged about 40 years at the time of occurrence. Claiming compensation amount of Rs.50,00,000/-, claim application was filed by the claimants by invoking Sections 140, 141, 142, 363A, 263B, 166 and 182A of the Motor Vehicles Act.

4.That was resisted by the Insurance Company stating that the claimants ought to have approached the Commissioner of Labour under the provisions of the Workmen Compensation Act; Other customary denials were made. Since it is a self accident, insurance company is not liable to pay the compensation under the provisions of the Motor Vehicles Act.

5.The third respondent was the mother of the deceased, she also claim compensation along with the claimants.

6.With regard to the first aspect of negligence, the Tribunal recorded a finding that the occurrence occurred due to the rash and negligent driving on the part of the deceased himself. Regarding the



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compensation, the Tribunal finding that Rs.50/- was paid for one employee under Workmen Compensation Claim. Finding that the deceased is employee under the first respondent, the notional income was fixed as Rs.8,000/-. 40% was added towards future prospects. After deducting 1/3rd amount, it assessing monthly income as Rs.7,467/-. Multiplier 15 was taken, since he was aged about 40 years at the time of occurrence. So total loss of dependency comes to Rs.13,44,060/-. To that the customary amounts were added and finally it awarded the total compensation amount of Rs.15,74,060/-.

7.Against which, this appeal is preferred by the Insurance Company, mainly contending that a tort-feasor or dependencies cannot maintain a petition before the Tribunal under the Provisions of the Motor Vehicles Act. They referred to the judgment of this Court made in the case of *National Insurance Company Ltd., Vs. Mahalakshmi and Others* reported in *2024(1) TNLAC 34*, wherein, it was found that the Division Bench of this Court held that a tort-feasor is not entitled to claim compensation. So also the dependent.



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8.Per contra, the learned counsel for the respondent relied upon the following judgments.

1.In the case of ***M.Veeraraj Vs. K.Kuppusamy and others*** made in C.M.A.No.4158 of 2019 dated 22.12.2023 passed by the Honourable Division Bench of this Court.

2.In the case of ***the Manager, M/s.Royal Sundaram General Insurance Company Ltd., Vs. K.Kosuri Kumari and others***, dated 18.12.2023, passed by the Co-ordinate Bench of this Court and

3.In the case of ***Valiben Laxmanbhai Thakore and another Vs. Kandla Bock Labour Board and one other*** passed by the High Court of Gujarat at Ahmedabad.

9.But, this Court is not convinced with regard to the arguments advanced by the claimants namely the respondents on the ground that under Section 163(A) of the Motor Vehicles Act, even a tort-feasor is entitled to claim compensation without proving the negligence. But, it is against the fundamental principle of law. Now, it is settled by the Honourable Supreme Court that Section 163 (A) will apply only in a case of third party vehicle is involved. But, the claimant himself is a tort-



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feaser. He is entitled for the compensation only if policy premium paid for personal accident coverage and not otherwise. So the contention on the part of the claimants is out of place and against settled legal principles and claim application filed by the claimants under Section 163(A) is not proper.

10.Now the next question, which arises for consideration is whether at the length of this time, is it proper on the part of the Court referring the claimants to go back to the Employees Compensation Tribunal. The accident took place on 31.07.2016. Now, we are in 2024. 8 years lapsed. So, at the length of this time, it may not be proper on the part of this Court driving the claimant to approach the Commissioner of the Labour to workout their remedy under the Provisions of Workmen Compensation Act.

11.Here these enough evidence to show that the deceased was employee under the first respondent, who remained exparte before the Tribunal. Therefore, when enough material is available to show the relationship between the deceased and the first respondent herein, I am of



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the considered view that this Court can itself undertake the exercise of the assessing the compensation.

12.In this regard, in the case of *the Oriental Insurance Co. Ltd., Vs. Krishan & Others*, reported in *2003 (2) LW 73*, it is observed by the Honourable Division Bench of this Court that even if the claim is made under the provisions of the Motor Vehicles Act, when the same is not maintainable, if the Insurer does not dispute the coverage under the provisions of Workmen Compensation Act, then in such cases the Insurer can be directed to pay compensation. This dictum was followed by the Co-ordinate Bench of this Court in the case of *M/s.United India Insurance Company Limited, Tiruppur, Vs. K.Shahidha Banu and others* made in *C.M.A.No.2723 of 2019*, dated 15.03.2022. So in the light of the above said settled proposition of law, now we undertake the exercise of fixing compensation.

13.The age of the deceased was fixed at 40 at the time of occurrence. Even though it was claimed by the claimants that the monthly salary of the deceased was Rs.21,000/-, no documentary



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evidence was produced. Since the employer, the first respondent namely Mohammed Ansar, did not appear before the Tribunal, no particulars can be gathered from him. So, notional income was fixed by the Tribunal at Rs.8,000/- p.m. Even as per notification of the Central Government, Considering the age that amount cannot be considered to be excessive. So that can be taken as monthly wages of the deceased, since he was aged about 40 years at the time of the death. The relevant factor as per the schedule is 184.17. (Rs.8,000 x 184.17 = 14,73,360 x 50/100 = 7,36,680). So the loss of income is arrived to Rs.7,36,680/-. The total award comes as tabulated below.

<i>1.The loss of income</i>	<i>Rs.7,36,680/-</i>
<i>2.Funeral Expenses</i>	<i><u>Rs. 5,000/-</u></i>
	<i><u>Rs.7,41,680/-</u></i>

14.Accordingly, the total award amount is reduced as Rs.7,41,680/- (Rupees Seven Lakhs Forty One Thousand Six Hundred and Eighty only). Since the award amount already being deposited, the claimants are entitled to withdraw the entire award amount as mentioned above and the parties are entitled for the share apportioned by the



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Tribunal.

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15. Accordingly, this appeal is partly allowed and the award passed by the Tribunal is modified as stated above. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

19.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1. The District and Sessions Judge, Motor Accident Claims Tribunal,
Additional District Court, Pudukkottai.
2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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