



C.M.A(MD)No.365 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.07.2024

Pronounced on : 08.11.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

**C.M.A(MD)No.365 of 2021
and
C.M.P(MD)No.3066 of 2021**

M/s.United India Insurance Company Ltd.,
Through its Divisional Manager,
Having Office at No.37/2,
Mattappa Street, Neel Complex,
Tenkasi

... Appellant/Respondent No.2

Vs.

1.Ganapathy

2.Subbaiah Thevar

... Respondents 1 & 2 /
Petitioners 1 & 2

3.Jitendra N.Pokar
Proprietor of M/s.Gujarat Timber Depot,
No.1/247-C, Tenkasi Road,
Piranoor Bardor,
Shencottah Taluk,
Tirunelveli District.

...3rd Respondent/1st Respondent



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Prayer:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order of the Tribunal of MACT-cum-Principal Sub Court, Tenkasi made in M.C.O.P.No.26 of 2013, dated 02.11.2020 and allow the appeal with costs.

For Appellant : Mr.C.Jawahar Ravindran

For R1 & R2 : Mr.R.J.Karthick

For R3 : No Appearance

JUDGMENT

(Judgment of the Court was delivered by P.VADAMALAI, J.)

This Civil Miscellaneous Appeal is preferred against the Award, dated 02.11.2020 passed in M.C.O.P.No.26 of 2013 by the Motor Accident Claims Tribunal/Principal Sub Court, Tenkasi.

2. The 2nd respondent in M.C.O.P.No.26 of 2013 is the appellant herein.

3. The petitioners/claimants are respondents 1 and 2 herein, who filed the claim petition in M.C.O.P.No.26 of 2013. The 1st respondent in the claim petition is the third respondent herein.



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4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 26 of 2013 are adopted hereunder.

5. The brief facts of the case:

The deceased Marudhupandi was working as a crane operator with the 1st respondent. Upon direction of the 1st respondent, on 29.10.2012 at about 2.30 p.m., he was operating the 1st respondent's Escort Crane bearing registration No.TN 76 E 8861 for lifting the timber woods at Kattalaimalai Estate, Papanasam, at that time the crane capsized in a deep pit. Due to impact, the deceased died on the spot. The V.K. Puram police registered a case in Crime No.341 of 2012 under Section 304(A) of IPC. The deceased Marudhupandi was aged 20 years and was earning Rs.20,000/- per month. He was the only son of the petitioners. Hence, the petitioners, who are the dependants of the deceased Marudhupandi, filed the claim petition seeking compensation of Rs.30,00,000/-.

6. The 2nd respondent objected the claim petition by contending that the accident took place due to the negligence on the part of the



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deceased himself. The petitioners can claim the compensation from the Deputy Commissioner of Labour and they cannot claim compensation before the Motor Accident Claims Tribunal.

7. Before the Tribunal both sides adduced oral and documentary evidence. On the petitioners' side P.W.1 to P.W.3 were examined and marked 7 documents as Ex.P.1 to Ex.P.7. On the respondents' side R.W.1 and R.W.2 were examined and Ex.R.1 to Ex.R.4 were marked and Ex.X.1 to Ex.X.3 were also marked.

8. After hearing both sides and after considering the evidences, the Tribunal held that the accident did not happen due to the negligence on the part of the deceased, it happened unfortunately at the alleged tough work spot and since the crane was insured with the 2nd respondent/Insurance Company, it is liable to pay compensation and awarded a total compensation of Rs.20,45,400/- under various heads to the petitioners with interest and cost. Aggrieved by the said award, the 2nd respondent/Insurance Company has preferred this Civil Miscellaneous Appeal.



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9. Heard both sides and perused the records in this Civil Miscellaneous Appeal.

10. A crane operator died when the crane capsized while he was operating it. The Tribunal has awarded compensation for his death at Rs.20,45,400/- with interest at 7.5% and this is now under challenge at the instance of the Insurance Company of the crane.

11. The learned counsel appearing for the appellant/Insurance Company has submitted that a crane, which was operated by the victim of the accident at the relevant point of time, capsized due to his negligence and he died. He did not possess a licence to use a crane in a public place and being a tortfeasor, is not entitled to compensation either. He added that if at all any, the legal representatives of the victim of the accident would only be entitled to compensation under the Employee's Compensation Act, 1923.

12. The learned counsel for the petitioners/claimants could not be able to contra arguments against the submission advanced on the



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appellant/Insurance Company side.

13. This Court perused the papers and satisfied that a fair submission has been made by the learned counsel for the appellant/Insurance Company. The accident had taken place 12 years from now to be precise on 29.10.2012. At this distant point of time, this Court considers it inappropriate to drive the claimants to the litigious course before the Commissioner under the Employee's Compensation Act, 1923. Therefore, this Court converts the appeal into one under the Employee's Compensation Act. The following substantial question of law is framed.

14. Whether the award passed by the Tribunal is liable to be set aside and since the claimants are entitled to claim compensation under the Employee's Compensation Act, how much can be awarded under the said Act?

15. The Division Bench of this Court rendered decision in the case of **“Oriental Insurance Company Ltd., /v/ Krishnan & Others”**



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reported in **2003 (2) Law Weekly 73**, and held that even where a claim has been made under the Motor Vehicles Act, when the same was not maintainable, if the insurer does not dispute the fact that the policy covers the liability of the insured to his employee under the Workmen's Compensation Act, then in such cases, the insurer should be held liable to pay compensation in accordance with Workmen's Compensation Act.

16. Considering the submissions of both sides and also the above judgment of the Division Bench of this Court in the case of “**Oriental Insurance Company Ltd., /v/ Krishnan & Others**” reported in **2003(2) Law Weekly 73**,” this Court is inclined to award compensation to the claimants under the Workmen's Compensation Act.

17. At this juncture, it is worthwhile to extract the relevant provision of the Workmen's Compensation Act, 1923 hereunder.

Section 4(1) and its Explanation II of the Workmen's Compensation Act, 1923 reads as follows:-

*“4.(1) Subject to the provisions
of this Act, the amount of compensation*



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shall be as follows, namely:

*(a) Where the **death** results from the injury - an amount equal to **fifty percent of the monthly wages of the deceased** workman multiplied by the relevant factor or an amount of eighty thousand rupees, whichever is more.*

(b) Where permanent total disablement results from the injury – an amount equal to sixty percent of the monthly wages of the injured workman multiplied by the relevant factor, or an amount of ninety thousand rupees, whichever is more.”

Explanation II where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of a clause (a) and clause (b) shall be deemed to be four thousand rupees only.”

18. In the case, the petitioners/claimants have not produced any document to show the income of the deceased, however, the Tribunal fixed the notional income as Rs.10,000/-. But, as per the Explanation II of the



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above provision, the monthly wages of the deceased would be taken as Rs.4,000/- p.m. The age of the deceased is 20 years as per Ex.P.2 - Post Mortem certificate. There is no dispute on both sides on the above aspects. Therefore, the relevant factor as per the Schedule IV of the Act, is 224.

19. From the above facts, this Court fixes the compensation at Rs.4,50,500/- under the Workmen's Compensation Act as follows:

1.	Monthly wages	Rs.4,000/- p.m.
2.	Age of the deceased	20 years
3.	Relevant Factor (as per Schedule IV)	224.00
4.	Loss of Income	Rs.4,000/- 50% x 224 = Rs.4,48,000/-
5.	Funeral Expenses	Rs.2,500/-
	Total Compensation	Rs.4,50,500/-

20. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.

(ii) The Award, dated 02.11.2020 passed in M.C.O.P.No.26 of 2013 by the Motor Accident Claims Tribunal/Principal Sub Court, Tenkasi is set aside.



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(iii) The amount of compensation awarded by the Tribunal is modified as Rs.4,50,500/- as per the Workmen's Compensation Act.

(iv) The appellant/Insurance Company is directed to deposit the entire modified compensation amount of Rs.4,50,500/-, less the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.26 of 2013 by the Motor Accident Claims Tribunal/Principal Sub Court, Tenkasi, within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the appellant/Insurance Company, the claimants 1 & 2 are permitted to withdraw equally, as apportioned by the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

(N.S.S.,J.) (P.V.M.,J.)
08.11.2024

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

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To

- 1.The Motor Accident Claims Tribunal/
Principal Sub Court,
Tenkasi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.

AND

P.VADAMALAI. J.

VSD

Pre-delivery Judgment made in

C.M.A(MD)No.365 of 2021

and

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08.11.2024