



**C.M.A(MD)No.384 of 2024**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 02.08.2024

Pronounced on : 14.10.2024

**CORAM**

**THE HONOURABLE MR.JUSTICE G.ILANGO VAN**

**C.M.A(MD)No.384 of 2024**

1.Murugan

2.Sumathi

... Appellants / Claimants

**Vs.**

1.Managing Director,  
M/s.MGM Edible Oils Pvt.Ltd.,  
No.109/1, Tenkasi Road,  
Rajapalayam,  
Virudhunagar District.

2.The Divisional Manager,  
Oriental Insurance Company,  
Office at III Floor, Builtech Foundations,  
Chittur Road, Palakkad,  
Kerala - 678 001.

... Respondents / Respondents

**PRAYER :-**

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to set aside the award and decretal order dated 13.12.2023 passed in M.C.O.P.No.87 of 2019 on the file of the Motor Accident Claims Tribunal / Additional District Court, Srivilliputhur, in so far as the quantum of compensation is concerned and enhance the compensation by allowing the present Civil Miscellaneous Appeal.



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For Appellant : Mr.R.J.Karthick  
For R1 : No appearance  
For R2 : Mr.C.Karthick

### **JUDGMENT**

This Civil Miscellaneous Appeal is filed to set aside the award and decretal order dated 13.12.2023 passed in M.C.O.P.No.87 of 2019 on the file of the Motor Accident Claims Tribunal / Additional District Court, Srivilliputhur, in so far as the quantum of compensation is concerned and enhance the compensation by allowing the present Civil Miscellaneous Appeal.

2. The case of the claimant is that on 15.11.2018, the deceased Saravanakumar was driving a load van bearing registration No.TN 84 D 6968 on the Rajapalayam to Tenkasi Main road near Amil Hotel. At that time, a two wheeler bearing registration No.TN 76 AC 3163 which was driven by its driver in a rash and negligent manner turned to his right without making any signal. Saravanakumar tried to avoid the accident. In that process, the vehicle hit the road side palm tree and he died on the spot. The deceased was



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working under the first respondent and was earning a sum of Rs.15,000/- per month. A case in Crime No.721 of 2018 was registered against the deceased. Claiming compensation amount of Rs.37 Lakhs, the claim application was filed.

3. That was resisted by the insurance company by filing counter stating that the accident took place because of the rash and negligent driving on the part of the deceased himself. So a petition under Section 166 of MV Act is not sustainable. Apart from that it is also stated that the first respondent vehicle was not having proper road permit. Other customary denials were made.

4. Regarding the first aspect of negligence, as admitted by the claimants, the deceased was the driver of the lorry bearing registration number TN 84 D 6968. The lorry hit against the palm tree which was standing on the left hand side of the road. It was concluded that it occurred due to the rash and negligent driving on the part of the deceased himself. Regarding the compensation amount, the Tribunal went on to assess the compensation as per the provisions of the Workmen Compensation Act.



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Since it was admitted that the deceased was working under the first respondent, towards the coverage, additional premium amount of Rs.100/- was collected towards the employee. On that account, the age of the deceased was fixed at 25 years as per Ex.P4. The monthly salary or wages of the deceased was fixed at Rs.8000/-. Since he was aged about 25 years at the time of accident, the relevant factor is 216.9. The formula was adopted as '50/100 x relevant factor x salary'. Complying the above said formula, the compensation was arrived at Rs.8,67,640/-. To that, the funeral expenses of Rs.5,000/- was added and total compensation awarded was Rs.8,72,640/-. Against which, the present Civil Miscellaneous Appeal is preferred by the claimants.

5. The appellant would submit that the amount taken by the Tribunal is not proper. As per Ex.P7 Salary Certificate, the monthly salary of the deceased, ought to have been fixed by the Tribunal.

6. Per contra, it was contended by the respondent that Ex.P7 does not indicate that the deceased was a permanent employee. He was only an acting driver. For claiming compensation amount under the provisions of Workmen



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Compensation Act, Rs.8,000/- was the upper limit which was properly taken by the Tribunal and which requires no interference.

7. Heard both sides.

8. First of all, filing a petition under Section 166 of the Motor Vehicles Act itself, is not proper. When the claimant states that the deceased was working under the first respondent company, as an employee, they ought to have moved Workmen Compensation Forum, for appropriate claim. But instead, they have chosen the wrong forum and inspite of that the Tribunal, on the basis of the judgment of the Hon'ble Division Bench of this Court in ***United India Insurance Co. Ltd., Vs. Krishnaveni and two others*** reported in ***2020(2) TN MAC 630*** and other cases, decided to comply the provisions of Workmen Compensation Act to assess the compensation.

9. No doubt that wrong forum has been chosen by the claimants. But at the same time, as mentioned above, the accident has happened on 15.11.2018. The claim petition was filed in the year 2019. The matter decided by the Tribunal in the year 2023. Now the present appeal has been preferred in the



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year 2024. Considering the oldness of the accident, it may not be proper either on the part of the Tribunal or on the part of this Court to direct the claimants to approach the Commissioner under the provisions of Workmen Compensation Act. As per the order of the Hon'ble Division Bench of this Court, when the employer-employee relationship is admitted, the assessment of compensation can be made as per the provisions of Workmen Compensation Act. So the exercise undertaken by the Tribunal is not illegal.

10. Now as mentioned above this is the contention on the part of the appellants that the monthly income of the deceased ought to have been fixed as Rs.15,000/- as per Ex.P7 - salary certificate. But there is a ceiling limit under the provisions of Workmen Compensation Act. So it was reduced to Rs.8,000/- and that cannot be found fault.

11. Learned counsel for the appellants would rely upon the judgment of the Co-ordinate Bench of this Court reported in **2024 - 1 - LW 652** in the case of **Managing Director, S.V.Chem Intermediates Pvt., Ltd., and another** and would submit that in view of the judgment of the co-ordinate bench of this Court, the ceiling limit prescribed was removed as per the amendment. The



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actual salary ought to have been taken by the Tribunal. Paragraph 38 of the judgment is extracted herein for better understanding of the issue.

*"38. In view of the discussion made above, this Court holds that the power of the Central Government to issue notification fixing the monthly wages as provided u/s 4(1-B) would be relatable and applicable to employee or the legal heirs of the employees who are not able to prove their monthly wages through oral and documentary evidence and in such cases, the monthly wages fixed by the Central Government vide the notification issued in exercise of powers conferred u/s 4(1-B) would come into play and in case an employee or his legal heirs is able to prove the monthly wages through oral and documentary evidence before the authority, the authority is bound to take the said monthly wages, so proved, for the purpose of computing the compensation payable u/s 4(1)(a) and (b) of the Act."*

12. By relying upon this paragraph it is seen that the learned counsel for the appellants has raised an argument that the actual salary namely Rs. 15,000/- must be fixed for assessing the compensation. Apparently, learned counsel for the appellants wants to take advantage of the benefit of deleting Explanation II to Section 4. Paragraph 33 of the judgment of the Hon'ble



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Supreme Court in *K.Sivarakan & Others Vs P.Sathishkumar and another* made in *Civil Appeal No.9046 of 2019 (Arising out of SLP(C) No.18110 of 2019)* can be extracted hereunder:

*"33. In the present case, the accident occurred on 31 January 2008 i.e, prior to the coming into force of Act 45 of 2009. Consequently, the High Court erred in extending the benefit of Act 45 of 2009. Consequently, the High Court erred in extending the benefit of Act 45 of 2009 which deleted Explanation II to Section 4 to the present case. The High Court was required to determine the compensation payable on the date of the accident on which date, the deemed cap of Rs.4000 as monthly wages was applicable."*

13. By referring to the above judgment of the Hon'ble Supreme Court and also the judgment of the co-ordinate bench of this Court reported in **2024 - 1 - LW 652 (Stated supra)** has observed that only in respect of cases, where the monthly income of the employee could not be proved by way of documentary evidence, the notification issued by the Central Government periodically in this regard must be taken as minimum wages. According to the Co-ordinate Bench of this Court, deletion of Explanation - II is for the benefit of the employees who are drawing salary with documents. If no document is



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available then, the amount fixed by the Central Government must be taken as minimum wages.

14. In the light of the above said, we will see whether any document is available to show the correct salary of the deceased. P.W.1 stated that the deceased was drawing Rs.15,000/- per month from his employer. He has produced Ex.P7, the salary certificate wherein we see that totally he was getting Rs.15,000/- as monthly salary. He was working as an acting driver. The documents issued by the MGM Edible Oil Private Limited, who is the first respondent herein. The first respondent remained ex parte before the Tribunal. We will see whether this documents is proved by examining the Issuing Authority. Eventhough first respondent remained ex party, one Mariappan was examined on the side of the petitioner. He stated that he is working as a Manager in the first respondent company. He stated that Ex.P7 was issued by the company. But without any authorisation from the first respondent company, the said Mariappan was examined who would also produce the salary disbursement register etc. The summon was taken to the Managing Director or the Manager, as the case may be, to give evidence with regard to the salary particulars of the deceased. It is specifically stated in the



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summons that the documents pertaining to the employment must be produced.

But as noted above, without any authority or without any document as the case may be, P.W.3 entered into the box and given evidence. Without supporting documents to show the disbursement register, etc. particulars, it may not be proper on the part of this Court to record a finding that Rs. 15,000/- was received by the deceased as monthly salary.

15. Moreover, it is also seen that the Issuing Authority is an authorized signatory. But one Mariyappan was examined. So he is not the issuing authority. So rightly the evidence was disbelieved by the Tribunal. So for those reasons I am of the considered view that absolutely I find no reason to differ from the finding of the trial Court that the monthly salary of the deceased must be fixed only as Rs.8000/-. So I find no reason to interfere with the award of compensation assessed by the Tribunal.

16. The relevant factor for the age group of 25 years is 216.91. So the formula is  $\text{monthly salary}/2 \times \text{relevant factor}$ . It was assessed as Rs.8,67,640/-. Funeral expenses awarded by the Tribunal as Rs.5,000/- is deleted from consideration. Therefore, the claimants are entitled for the total compensation amount of Rs.8,67,640/-.



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17. The Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is modified as follows:

(i) The quantum of compensation awarded by the Tribunal is reduced to ***to Rs.8,67,640/- (Rupees Eight Lakhs Sixty Seven Thousand Six Hundred and Forty only)*** with interest at the rate of 12% per annum.

(ii) The second respondent / insurance company is directed to deposit the award amount together with interest at the rate of 12% per annum from the date of accident till the date of realization to the credit of M.C.O.P.No.87 of 2019 on the file of the Motor Accident Claims Tribunal / Additional District Court, Srivilliputhur, within a period of two months from the date of receipt of a copy of this judgment, if not already deposited.

(iii) On such deposit being made, the appellants / claimants are at liberty to withdraw the compensation amount in equal share with interest, after following the due process of law, less any amount already received by them.

(iv) No costs.

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

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**G.ILANGO VAN, J.**

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To

- 1.The Motor Accident Claims Tribunal / Additional District Court,  
Srivilliputhur
- 2.The Section Officer, Vernacular Records Section,  
Madurai Bench of Madras High Court, Madurai.

Pre-Delivery Judgment made in  
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