



CMA.(MD)No.654 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/08/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 651 of 2021

and

CMP (MD) No. 6211 of 2021

TATA AIG General Insurance Company Limited,
Tower A, 15th Floor,
Gampatrao Kadan marg,
Lower Parel,
Mumbai-400 013 : Appellant/2nd Respondent

Vs.

1.Mariyathal alias Mariyammal
2.A.Rengaraj
3.Minor R.Aravindh : Respondents 1 to 3/
Petitioners
(Minor R3 is represented by his
mother and next friend the 1st
respondent Mariyathal alias
Mariyammal)

4.M.Shajahan : 4th Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal is filed under
Section 173 of the Motor Vehicles Act, 1988, to set aside
the judgment and decree made in MCOP No.1225 of 2014,
dated 12/10/2020 on the file of the Motor Accident Claims
Tribunal, Special District Court, Tiruchirappalli.



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For Appellant : Mr.J.S.Murali
For R1 to R3 : Mr.N.Sudhagar Nagaraj
For 4th Respondent : Dispensed with

J U D G M E N T

This Civil Miscellaneous Appeal is filed seeking to set aside the award, dated 12/10/2020 passed in MCOP No.1225 of 2014 by the Motor Accident Claims Tribunal, Special District Court, Trichy.

2.The facts in brief:-

On 11/05/2014, the first respondent in the main petition namely M.Shajahan instructed the deceased Arjun and gave his bike TN-48-Q-7101 for use to display the advertisement in and around Samayapuram. After displaying the Advertisement Poster, he was riding the vehicle in the north-south direction. When he was nearing the place of occurrence, at about 01.30 am in the night, an unidentified vehicle came from the north to south direction and hit the Arjun and Vijay. Arjun sustained multiple injuries, taken to the Trichy Government Hospital. But died on 12/05/2014 at Sri Muthu Nursing Home, Woriyur, Trichy without responding to the treatment.



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3.A case in Crime No.116 of 2014 was registered by the Traffic North Investigation Police for the offences under sections 279, 337 @ 304(A) IPC. Claiming compensation of Rs.10,00,000/-, the claim petition was filed by the dependents under sections 163(A) and 167 of the Motor Vehicles Act.

4.That was resisted by the appellant herein by filing counter stating that even as per the allegation made in the FIR, the occurrence took place because of the rash and negligence of the unidentified vehicle; The deceased is a third party; So far as the vehicle of the first respondent is concerned, he was driving his own vehicle; The claimant colluded with the first respondent and filed the petition seeking compensation.

5.Before the Tribunal, on the side of the claimants, one witness was examined and 8 documents were marked. On the side of the Insurance Company, 2 witnesses were examined and 2 documents were marked.

6.With regard to the first aspect of negligence, the Tribunal recorded a finding that since the petition was filed under section 163(A) of the Motor Vehicles Act, it is not necessary for the claimants to prove that the



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occurrence took place because of the rash and negligent act of any of the parties. Since, it was established that the deceased was working under the employment of the first respondent and the occurrence took place during and in the course of employment, the claimants are entitled to file claim petition before the Commissioner, as per the provisions of the Employees Compensation Act and also under section 163(A) of the Motor Vehicles Act. By concluding so, the Tribunal went to assess the compensation amount and ordered payment of Rs.5,34,690/-, by fixing the notional income of the deceased at Rs.4,200/-, by adding 40% towards future prospects to the basis amount of Rs.3,000/-. 1/2nd of the amount was deducted towards personal and living expenses. Since, he was aged about 19, multiplier was adopted as 18 and the Loss of Dependency was fixed at Rs.4,53,600/-. To that, other conventional amounts were added. In total, the following amount of compensation was awarded by the Tribunal as per the tabulation given hereunder:-

Loss of Dependency	Rs.4,53,600/-
Transportation charges	Rs. 5,000/-
Loss of estate	Rs. 5,000/-
Medical Bills	Rs. 6,090/-
Filial Consortium	Rs. 60,000/-
Funeral expenses	Rs. 5,000/-
Total	Rs.5,34,690/-



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7.Challenging the same, this appeal is preferred by the appellant.

8.Heard both sides.

9.The learned counsel appearing for the appellant would reiterate the counter filed by him before the Tribunal. He would submit that it is a case of hit and run, section 163 of the Motor Vehicles Act cannot be invoked by the claimants. The offending vehicle was not added. So, the very filing of the claim application against the first respondent before the Motor Accident claims tribunal is illegal and improper.

10.The learned counsel appearing for the respondents 1 to 3 would submit that even in case of hit and run cases, without impleading the owner of the vehicle, the deceased was covered under the insurance taken by the owner of the vehicle. The second respondent in the main petition, who is the appellant herein is bound to reimburse the compensation on behalf of the first respondent in the main petition.

11.The applicability or invoking section 163(A) of the Motor Vehicles Act is completely out of place. It is



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a case of hit and run, section 163(A) of the Motor Vehicles Act can be invoked, when the third party is impleaded as a respondent. When an unidentified vehicle caused the occurrence, section 163(A) of the Act cannot be invoked against the employer namely the first respondent in the main petition. The claimants ought to have filed proper petition before the Workmen Compensation Act Tribunal under Motor Vehicles Act by invoking section 163-A of the Motor Vehicles Act.

12. Section 163(A) of the Motor Vehicles Act, 1988 reads as under:-

"163-A. Special provisions as to payment of compensation on structured formula basis.-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the cash of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs of the victim, as the case may be.



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Explanation-For the purpose of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2)In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicle concerned or of any other person.

(3)The Central Government may, keeping in view of the cost of living by notification in the Official Gazette, from time to time amend to Second Schedule."

13.Now it is settled law that even in case of the claim petition filed under the provisions of the Motor Vehicles Act before the Motor Accident Claims Tribunal, if the employer and employee relationship is admitted, then the Tribunal can convert the application one under the provision of Workmen's Compensation Act and can pass award.



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14.By following the above said principles of law, this matter can also be disposed of assessing the compensation by invoking the provisions of the Workmen's Compensation Act.

15.The age of the deceased was 19. There is no document to show the correct monthly salary of the deceased. The Tribunal fixed Rs.4,200/- towards notional income. On the date of the occurrence, as per section 4 of the Workmen's Compensation Act, Rs.8,000/- must be taken. The relevant factor as per the schedule for the age group of 19 is 225.22.

$$\text{Rs.8,000/-} \times 225.22 \times 50\% = \text{Rs.9,00,880/-}$$

16.So, the award is modified to the effect that the claimants are entitled to the amount of Rs.9,00,880/- along with interest @ 7.5% from the date of petition till the date of realization.

17.With the above said modification, this Civil Miscellaneous Appeal is **allowed**. The appellant Insurance Company is absolved from its liability to pay the compensation. The 4th respondent herein is directed to pay the above said modified amount of **Rs.9,00,880/-** together



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with interest at the rate of 7.5% p.a, from the date of petition till the date of deposit. On such deposit, the claimants are entitled to get their share as per the apportionment of the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Index:Yes/No

Internet:Yes/No

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02/08/2024

To,

- 1.The Motor Accident Claims Tribunal/
Special District Judge,
Trichy.
- 2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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