



C.M.A.(MD).No.240 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

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1. Amsavalli
2. Mahamuni
3. Bhuvaneswari
4. Shenbagavalli
5. Minor Saraswathi ... Appellants/Claimants
(Minor Appellant No.5 is represented by
her mother - 1st Appellant)

-vs-

1. N.Rajendran
2.The Divisional Manager,
M/s.National Insurance Company Limited,
74A, Paramathi Road,
Namakkal. ... Respondents /Respondents
(1st Respondent set – exparte by the Tribunal.
Hence notice may be given up against R1 herein)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 31.08.2012 in M.C.O.P.No.1157 of 2010, on the file of the Motor Accident Claims Tribunal/I Additional District Sessions Court (PCR), Trichirappalli.

For Appellants : Mr.Jerin Mathew
for M/s.Ajmal Associates



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For R2 : Mr.D.Sivaraman
For R1 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants as against the order passed in M.C.O.P.No.1157 of 2010, on the file of the Motor Accident Claims Tribunal/I Additional District Sessions Court (PCR), Trichirappalli. wherein, the appellants herein have filed the claim petition before the Tribunal, claiming compensation for the death of Udhayakumar @ Muthukumar.

2. The Tribunal has awarded a sum of Rs.4,11,044/- (Rupees Four Lakhs Eleven Thousand and Forty Four only) along with interest at the rate of 7.5% p.a., towards compensation by invoking Workmen Compensation Act. As against the award passed by the Tribunal, the present appeal has been preferred by the appellants/ petitioners.

3. The brief facts of the averments made in the petition before the Tribunal are as follows:



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On 29.09.2009, at about 4.30 a.m, when the deceased Udhayakumar @ Muthukumar was proceeding in a Lorry as cleaner bearing Registration No.TN-28-B-3170 along with the first respondent and insured with the second respondent, the driver of the lorry dashed against the Tamarind Tree and thereby the said Udhayakumar @ Muthukumar sustained injuries and he was taken to Government Hospital at Ariyalur and he died. The petitioners are the legal heirs of the deceased Udhayakumar @ Muthukumar and they have filed the petition, claiming compensation.

4. The brief averments in the counter filed by the second respondent are as follows:

The petition is not maintainable either in law or on facts. The accident did not occur as alleged in the petition and did not occur due to the negligence on the part of the driver of the first respondent's vehicle. The second respondent is not liable to pay the compensation to the petitioners. The second respondent denied the age and income of the deceased and the petitioners are not depending upon the income of the deceased. Hence, the petition is liable to be dismissed.



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5. Before the Tribunal, in order to prove the case of the petitioners, P.W. 1 and P.W.2 were examined and Exhibits P.1 to P.8 were marked. On the side of the respondents, neither witnesses were examined and nor documents were marked.

6. The Tribunal after analyzing evidences held that the accident took place due to the negligence on the part of the driver of the first respondent and awarded compensation under the Workmen's Compensation Act. Though the petition was filed under Section 167 and 163 of Motor Vehicle Act, the compensation was awarded under the Workmen's Compensation Act, as against the order passed by the Tribunal, the petitioners have preferred appeal before this Court on various grounds including the ground that the Tribunal once came to a conclusion that the accident took place due to the negligence on the part of the driver of the first respondent and also filed petition under the provisions of Motor Vehicle Act, the Tribunal ought to have adopted the multiplier method under the Motor Vehicle Act and not under the provisions of Workmen's Compensation Act for awarding compensation.



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7. The learned counsel appearing for the appellants would contend that the appellants/petitioners are the legal heirs of the deceased. The accident took place due to the rash and negligence on the part of the driver of the first respondent and the first respondent vehicle was insured with the second respondent, on the date of accident. The deceased had died due to the rash and negligence on the part of the first respondent's driver. The petitioners have filed the claim petition under the provisions Motor Vehicle Act and the second respondent/Insurance Company also contested the case and not filed any appeal. Therefore, the accident took place due to the rash and negligence on the part of the driver of the first respondent, which has not been denied by the second respondent/Insurance Company. But the Tribunal after fixing the negligence on the part of the first respondent, while awarding compensation adopted the Workmen's Compensation Act. Though under Section 167 of Motor Vehicle Act, the claimant can avail any one of the Act, the claimant filed petition under the Motor Vehicle Act, but the Tribunal erroneously awarded compensation under Workmen's Compensation Act. Therefore, the order passed by the Tribunal is liable to be set aside in respect of the quantum of the award.



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8. The learned counsel appearing for the second respondent would contend that the petition itself was filed by the petitioners by claiming that the deceased was working as cleaner under the first respondent Lorry and thereby they admitted that the deceased was a workman and the claim was filed on the capacity of workmen and therefore the Tribunal has awarded the compensation under the Workmen Compensation Act. Since the Tribunal awarded compensation under the Workmen's Compensation Act, the second respondent has not challenged the award and also agreed to settle the amount as per the Workmen's Compensation Act. There is no coverage of policy for the deceased and the policy covers only as Workmen. Therefore, the Tribunal correctly awarded the compensation under the Workmen's Compensation Act. Therefore, present appeal is liable to be dismissed.

9. This Court heard both sides and perused the materials on record.

10. In this case, there is no dispute in respect of the accident and involvement of the vehicle and the main contention of the appellants is that they filed petition under the Motor Vehicle Act. But the Tribunal has awarded compensation by invoking the provisions of Workmen's Compensation Act.



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The second respondent denied the coverage of the policy, since there is no coverage of policy for the deceased under the Motor Vehicle Act but there is coverage of policy under the Workmen's Compensation Act. Therefore, the Tribunal has awarded amount under the Workmen's Compensation Act.

11. In this context, it is relevant to refer that the petitioners filed the claim petition under the provisions of Motor Vehicle Act and the second respondent has also contested the case and no plea was taken on behalf of the second respondent that the petition is not maintainable under the Motor Vehicle Act and the appellants can only avail the benefit under the Workmen's Compensation Act. Once the Tribunal come to a conclusion that the accident took place due to the negligence on the part of the driver of the first respondent by invoking provisions of Motor Vehicle Act, the Tribunal ought to have awarded compensation under the provisions of Motor Vehicle Act and not under the Workmen's Compensation Act. Once the Tribunal came to the conclusion that the petitioners are entitled to compensation only under the Workmen's Compensation Act, the Tribunal ought to have sent back the bundle to the competent authority for consideration but the Tribunal after satisfied that the petition was filed under the Motor Vehicle Act ought not to



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have granted compensation under the Workmen's Compensation Act. As far as the coverage of policy is concerned, the Insurance Company has not taken a plea before the Tribunal that they are not liable to pay compensation under the Motor Vehicle Act and now only they have taken such a plea and the same cannot be accepted. Therefore, the compensation awarded by the Tribunal under the Workmen's Compensation Act is liable to be set aside and this Court is inclined to award compensation by invoking provisions of Motor Vehicle Act.

12. According to the appellants, the deceased was aged about 23 years at the time of accident, but in EX.P2 – Post Mortem Certificate, it reveals that on the date of accident the deceased was aged about 22 years. Considering the nature of work, this Court has taken a sum of Rs.5,000/- (Rupees Five Thousand only) including future prospectus as monthly income. Since the deceased was a bachelor, after deducting 50% of the amount towards personal expenses, the annual income would come to a sum of Rs.30,000/- (Rupees Thirty Thousand only). For the age of 22 years, the proper multiplier would be “18”. By adopting the same the award amount would come to Rs.5,30,000/- (Rupees Five Lakhs Thirty Thousand only) towards loss of



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income. Further it would be appropriate to award a sum of Rs.40,000/- (Rupees Forty Thousand only) towards loss of consortium, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) towards funeral expenses and a sum of Rs.15,000/- (Rupees Fifteen Thousand only) towards loss of estate.

13. In view of the above said discussion, the appellants/petitioners are entitled to the amount as follows:

Loss of Income	-	Rs.5,30,000/-
Loss of consortium	-	Rs. 40,000/-
Funeral Expenses	-	Rs. 15,000/-
Loss of Estate	-	<u>Rs. 15,000/-</u>
Total	-	Rs.6,00,000/-

In total, the petitioners are entitled for a sum of Rs.6,00,000/- (Rupees Six Lakhs only) towards compensation.

14. In the result, this Civil Miscellaneous Appeal stands partly allowed with costs. The order passed by the Motor Accident Claims Tribunal/I Additional District Sessions Court (PCR), Trichirappalli, in M.C.O.PNo.1157



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of 2010, dated 31.08.2012, is modified to the effect that the petitioners are entitled to a sum of Rs.6,00,000/- (Rupees Six Lakhs only) towards compensation along with interest at the rate of 7.5% p.a from the date of filing petition till the date of realization of payment. The petitioners are entitled to the award amount as apportioned by the Tribunal and already the Insurance Company has deposited the entire amount as awarded by the Tribunal. The enhancement amount shall be deposited within a period of two months from the date of this order. On such deposit by the second respondent, the appellants are at liberty to withdraw the same. Since already the amount was withdrawn by the petitioners, the petitioners 1 and 2 are entitled to equal share in the enhanced amount.

23.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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- To
1. The Motor Accident Claims Tribunal/
I Additional District Sessions Court (PCR),
Trichirappalli.
 2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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