IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.52 of 2025

B.Mohamed Jamsheed ...Appellant

Vs.

1. Vijaya Suraj Siripadagala

2. The Manager,
The New India Assurance Co. Ltd.,
Bombay Mutual Building, 6th Floor,
No.232, NSC Bose Road, Chennai – 600 001. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the dismissal order passed by the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai in MCOP.No.2956 of 2020 dated 19.12.2023.

For Appellant : Ms.S.Vijaya
for M/s. Lane Legal

For Respondents : R1 – Exparte
: Mr.P.Sankaranarayanan, for R2

JUDGEMENT

Challenging the judgment and decree dated 19.12.2023 made in MCOP.No.2956 of 2020 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai, the claimant is before this Court.

2. It is the case of the appellant/claimant that, on 03.06.2020 at about 03.00 am., when he was driving a rice loaded Container Lorry bearing Regn.No.TN-18-AT-8030 insured with the 2nd respondent and was proceeding from Bengaluru to Trichy, near Kattamedu Forest Office, at that time, as the Lorry bearing Regn.No.AP.02-TC-4392 owned by the 1st respondent insured with the 2nd respondent driven by its driver in a rash and negligent manner which was going in front of the Lorry driven by the appellant applied sudden break without any signal, inspite of his great efforts to stop the lorry driven by him by applying break, the Lorry driven by the appellant hit the backside of the 1st respondent's Lorry, due to which, the appellant sustained grievous injuries and got admitted in the hospital. Thereby, the appellant filed a claim petition claiming a compensation of Rs.45,00,000/-. Before the tribunal, the appellant/claimant examined himself as P.W.1 and marked exhibits P.1 to P.13

and on the side of the respondents, one witness viz., R.W.1 was examined and exhibits R.1 to R.5 were marked and the Disability certificate was marked as court document Ex.C.1. After trial, the tribunal had mechanically dismissed the claim petition filed by the appellant/claimant by holding that the entire accident had taken place due to the rash and negligent driving on the part of the appellant/claimant. Challenging the same, the appellant has come up with this appeal.

3. Learned counsel appearing for the appellant submitted that the above said accident had happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent vehicle and the same is evident from the FIR marked as Ex.P1, which came to be registered as against the driver of the 1st respondent vehicle. However, the tribunal had miserably failed to consider the same and had mechanically fixed the entire negligence on the part of the appellant and as a result, dismissed the claim petition made by the appellant/ claimant, which cannot be sustained. Further, though it is presumed without admitting that the above said accident happened solely due to the rash and negligent driving on the part of the appellant/claimant, even then, the claimant

is entitled to claim compensation for the injuries sustained by him, since the appellant sustained a serious injury in the above accident, due to which, his right leg below knee is amputated. In support of her contention, the learned counsel relied upon the decision of the Hon'ble Division Bench of this Court in the case of ***The Oriental Insurance Co. Ltd. Vs. Krishnan and Ors*** reported in ***2003-2-L.W.73***.

4. Per contra, the learned counsel appearing on behalf of the 2nd respondent fairly submitted that, both the lorry driven by the appellant and the offending lorry are insured with the 2nd respondent. However, as the tribunal had fixed the entire negligence on the part of the appellant, the tribunal had dismissed the claim made by the appellant. Hence, this Court may convert the claim made by the appellant under the MV Act to the one under the Employee's compensation act and award compensation under the same.

5. Heard learned counsel on either side and perused the materials available on record.

6. The factum and manner of the accident is not in dispute and therefore, this Court is not entering into the said aspect. The major issue arises for consideration in the present appeal is *whether the appellant/claimant is entitled to claim compensation under the Employee's Compensation Act and whether this Court has power to convert the Motor Vehicle claim into Employeee's Compensation claim*?

7. In this regard, the decision of the Division Bench of this Court in the case of ***Krishnan's case*** *(supra)* relied upon by the learned counsel for the appellant enures in favour of the appellant/claimant, wherein the Division Bench of this Court has held hereunder:

> *"5. Counsel also invited our attention to a judgment of this Court in the case of* ***Oriental Insurance Co. Ltd. vs. Kalliya Pillai and others, MANU/TN/2046/2002 : 2002 (4) CTC 469****, where the Court took the view that even the liability under Workmen's Compensation Act, 1923 may be determined by this Court having regard to the extent of the coverage under the policy after it was found that the claim made before the Tribunal under the Motor Vehicles Act is not maintainable. The Insurer appellant does not dispute the fact that the policy covers*

the liability of the insured to his employee under the Workmen's Compensation Act. Under Section 3 of that Act negligence of the workmen who dies in an accident arising out of and in the course of his employment does not absolve the employer of the obligation to pay compensation in accordance with the provisions of that Act.

6. Having regard to this position, we deem it just to hold that the Insurer is liable to pay compensation payable in accordance with the provisions of the Workmen's Compensation Act. If the amount of such compensation is higher than the amount of the 'No fault liability' under Section 140 of the Motor Vehicles Act, Insurer will not be liable to make the payment under Section 140(5) of the Motor Vehicles Act. If the amount of the no fault liability is higher, then no amount need be paid under the Workmen's Compensation Act, as the claimant is entitled to the higher of the two amounts, but not both. The order under appeal which directs payment of Rs.2.00 lakhs to the parents of the deceased on the reasoning that though the negligent employee could not have claimed compensation, nevertheless his parents can, is set aside.

7. Appeal is allowed in part subject however to the directions to the appellant / relief granted to the claimants, under paragraph-6 above."

8. Further, in the present case, it is not disputed by the parties that the above said accident had happened during the course of the employment. Such

being the position, there could be no embargo for this Court to consider the claim filed by the claimant/workman under the Employee's Compensation Act,1923 as held by the Division Bench of this Court in ***Krishnan's case***.

9. In the light of the aforesaid decision, which applies squarely to the facts of this case, the assessment of the compensation by the Tribunal under Section 166 of the Motor Vehicles Act is erroneous as the assessment can be made only under the provisions of the Employee's Compensation Act 1923.

10. Assessing the compensation under the Employee's Compensation Act in respect of the accident that took place in the year 2020, fixing the age of the deceased as 44 years, the relevant factor to be adopted is 172.52 and the monthly wages of the appellant/claimant to be fixed is Rs.15,000/-. Therefore, fixing Rs.15,000/- as the monthly wages, as fixed by the appropriate, the

compensation under the head loss of income is arrived at : 50/100 x 60/100 x 15000 x 172.52 = **Rs.7,76,340/-**.

11. Accordingly, the compensation awarded by the Tribunal under the Motor Vehicles Act is set aside and instead compensation in a sum of Rs.7,76,340/- is awarded to the appellant/claimant under the Employee's Compensation Act.

12. Accordingly, the appeal stands allowed in part and the impugned award is modified by awarding a compensation of **Rs.7,76,340/-**. The 2nd respondent/Insurance company is directed to deposit the said amount to the credit of MCOP.No.2956 of 2020 along with interest at the rate of 12% per annum from the date of claim petition till the date of deposit, less, the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the same directly to the bank account of the appellant

through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the compensation awarded by this Court. It is underscored that the appellant is not entitled to any interest for the default period, if any. No costs.

28.01.2025

skt

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

The Motor Accidents Claims Tribunal,
II Judge, Small Causes Court,
Chennai.

M.DHANDAPANI, J.

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C.M.A.No.52 of 2025

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