

C.M.A.(MD).No.413 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.(MD).No.413 of 2023

1.Murugesan
2.Lakshmi
3.Deva
4.Dhivya

... Appellants / Claimants

vs.

1.SVS. Vijayakumar

2.The Branch Manager,
United India Ins.Co. Ltd.,
463, Sri Vilasam Chit Buildings,
VOC Street,
Karaikudi,
Sivagangai District.

3.Vijayan

4.Senthil Kumar

5.The Branch Manager,
National Ins.Co.Ltd.,
142/1, Mangala Vinayagar Complex,
Lake View Road,
K.K.Nagar,
Madurai.

... Respondents/Respondents

(Given up for the respondents 3 to 5 in the CMA)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Order and Decretal Order dated 11.11.2022 made in M.C.O.P.No.362 of 2021 on the file of Motor Accident



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Claims Tribunal / Mahila Judge, Pudukkottai.

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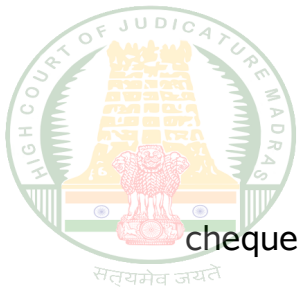
For Appellant : Mr.N.Kamesh
For 1st Respondent : Mr.D.Ramesh Kumar
For 2nd Respondent : Mr.V.J.Kumaravel
For Respondents 3 to 5 : Given up

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the dependents of deceased Marimuthu, S/o.Murugesan against the Order of dismissal passed dated 11.11.2022 in M.C.O.P.No.362 of 2021 by the Motor Accident Claims Tribunal / Mahila Court, Pudukkottai.

2. Heard the arguments of the learned counsel for the appellants and the learned counsel for the respondents 1 and 2.

3. Before the Tribunal, on behalf of the 2nd respondent/Insurance Company, a memo was filed to the effect that the claimants had already approached the Workmen's Compensation Forum at Trichy in W.C.No.58 of 2018 on the file of Joint Commissioner of Labour, at Pudukkottai. The deceased was working as driver of Indigo Car bearing Reg.No.TN-10-W-9533 at the time of accident [that occurred on 19.10.2017]. The claimants have received the compensation of Rs.8,84,800/- payable by the 4th respondent namely Tr.Sendhil Kumar (in whose name R.C.stands) and he had satisfied the order by paying the said amount through SBI banker's



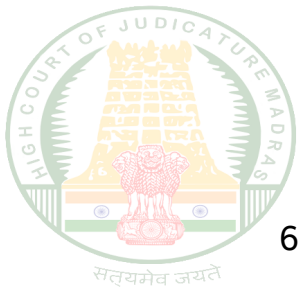
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cheque and the 2nd respondent/Insurance Company would state that as the claimants suppressed the real facts and filed this claim petition and sought for dismissal of claim petition.

4. The Tribunal upon hearing both sides held that in W.C.No.58 of 2018, it was ordered to pay Rs.8,84,800/- against the 4th respondent and the same was duly complied with by the 4th respondent by paying the said amount with interest (Rs.13,59,538/-) and it was observed by the Tribunal that the petitioners had suppressed the real fact and as such the claim petition was dismissed by the Tribunal as not maintainable. Against the said Order, the claimants have preferred this appeal.

5. The learned counsel for the appellants/claimants would strenuously argue that the claim for Workmen's Compensation was filed under Workmen's Compensation Act, against the employer and claim petition under Motor Vehicles Act was filed under Section 166 of Motor Vehicles Act, they are entitled to seek remedy and it does not amount to double jeopardy. To buttress his arguments, the below said judgment was referred to:

Divisional Manager, New India Assurance Company Ltd., v. Astalingam and others reported in 2018 (2) TNMAC 517.



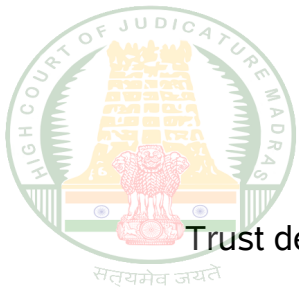
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6. Whereas, the learned counsel for the 2nd respondent would vehemently contend that as per Section 167 of Motor Vehicles Act, the claimants having received the compensation under Workmen's Compensation Act, again they cannot claim compensation under Motor Vehicles Act. To substantiate his arguments, he placed reliance on the below said judgment :

Oriental Insurance Co. Ltd., v. Dyamavva and others reported in **2013 (9) SCC 406.**

7. In Oriental Insurance Co.Ltd., v. Dyamavva and others, one Yalgurudappa was employed as a Pump Operator in the Mechanical Engineering Department, Mormugao Port Trust. During the course of employment, while the said Yalgurudappa was riding as a pillion on a motor cycle bearing Reg.No.MO.GA-02-L-8479, he was hit by a tipper (Reg.No.TN-07-V-4548). Consequent upon the injury suffered by Yalgurudappa in the said accident, he succumbed to the injuries on the spot. The tipper was insured with the Oriental Insurance Co.Ltd., the appellant therein.

8. Meanwhile, the Port Trust initiated proceedings for paying compensation to the dependents of the deceased Yalgurudappa suo-motu "under Section 8 of the Workmen's Compensation Act, 1923". The Port



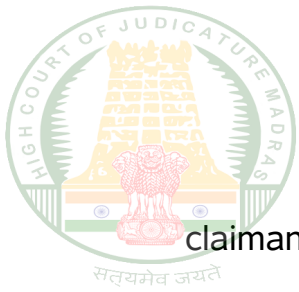
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Trust deposited a sum of Rs.3,26,140/- with the Workmen's Compensation Commissioner on 04.11.2003. The Authority having issued notice to the claimants (dependents of the deceased Yalgurudppa), recorded the statement of widow of Yalgurudappa and thereafter by an order dated 29.04.2004, directed to release a sum of Rs.3,26,140/- to be apportioned by the widow of the deceased and his daughter.

9. But, well before that date, the widow of Yalgurudappa had filed a claim petition under Section 166 of Motor Vehicles Act, 1988 on 30.05.2003.

10. The Apex Court held that she has exercised her option at the first instance to seek compensation under the Motor Vehicles Act. While determining the compensation, the Tribunal, Bagalkot quantified the compensation at Rs.11,44,440/- and ordered a deduction of a sum of Rs. 3,26,140/- (paid to the claimants under Workmen's Compensation Act, 1923).

11. It is relevant to note that the Hon'ble Apex Court held that the said deduction gives full effect to Section 167 of the Motor Vehicles Act, 1988, inasmuch as, it awards compensation to the claimants under the enactment based on the option first exercised and also ensures that the



claimants are not allowed dual benefit under the two enactments.

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12. It is relevant to note that this Court in ***United India Insurance Co. Ltd., v. Anthony Selvam, 2014(2) TN MAC 227*** has formulated principles governing the election provided under Section 167 of the Motor Vehicles Act, 1988 which are culled out and extracted hereunder:

"(1) In case the accident arises out of the use of the Motor Vehicle and it results in death or injury, the Legal Heirs of the deceased or the injured shall be entitled to claim Compensation under the provisions of the Motor Vehicles Act, 1988 against the Owner, Driver and Insurer of the offending vehicle on the basis of the tortious liability which has been made statutory;

(2) In case the Owner of the offending vehicle happens to be the Employer of the deceased or injured, as the case may be, then the Legal Heirs of the deceased or the injured may make a claim either under the Motor Vehicles Act, 1988 or under the Employees' Compensation Act, 1923;

(3) If the claim is made under the Employees' Compensation Act, 1923 and it is allowed by the Commissioner, then the claimants cannot make a claim under the Motor Vehicles Act, 1988;

(4) If the claim made under the Employees' Compensation Act is dismissed holding that the deceased or the injured was not a Workman under the alleged



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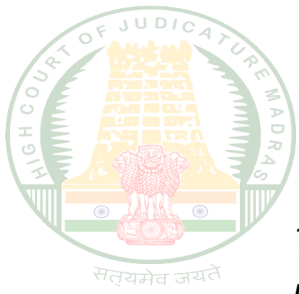


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Employer or that the accident did not arise out of and in the course of the employment of the deceased or injured, then the dismissal of the claim under the Employees' Compensation Act, 1923 will not be a bar for making a claim under the Motor Vehicles Act, 1988;

(5) In case the claim is made at the first instance under the Motor Vehicles Act, 1988, there is no possibility of the claim being negatived in toto if the accident had resulted in death or Permanent Disability attracting the no-fault liability clauses found in the Motor Vehicles Act, 1988. In such cases, the Claimants cannot make a claim under the Employees' Compensation Act, 1923 after getting an award in the Motor Accident Claims Tribunal;

(6) In case the claim is made under the Motor Vehicles Act, 1988 against the Owner of the offending vehicle, who was not the Employer of the deceased or injured, as the case may be, and the Driver or Insurer of the said vehicle, after an Award is passed by the Motor Accident Claims Tribunal, a claim against the Employer of the deceased or the injured, as the case may be, under the Employees' Compensation Act, 1923, who was not a Respondent in the claim will be maintainable, but after ascertaining the amount payable under the Employees' Compensation Act, 1923, the Commissioner shall direct the Employer and its insurer to pay only the difference between the amount calculated under the Employees' Compensation Act and the amount awarded by the Motor Accident Claims Tribunal under the Motor Vehicles Act,



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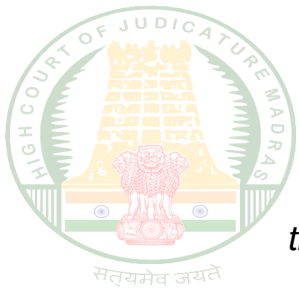
1988, only if the compensation payable under the Employees' Compensation Act exceeds the amount awarded under the Motor Vehicle Act;

(7) In case claim is made under the Employees' Compensation Act against the Employer and an Award is passed and a claim for Compensation is made under the Motor Vehicles Act against the Owner of the offending vehicle not being the Employer of the deceased or injured and against the Driver and Insurer of the offending vehicle on the basis of tort, then while determining the Compensation under the Motor Vehicles Act, the amount obtained as Compensation under the Employees' Compensation Act, 1923 shall be taken into account and that should be deducted. After deducting the same, the balance amount alone shall be awarded as Compensation in the MCOP before the Motor Accident Claims Tribunal."

13. Section 167 of Motor Vehicles Act, is extracted hereunder:

"167.Option regarding claims for compensation in certain cases.-

Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of



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those Acts but not under both."

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14. The object of Workmen's Compensation Act is to provide compensation to the injured person or in case of death, to the dependents. Both are beneficial enactments. Section 167 clearly lays down that when a claim arises under Motor Vehicles Act and Workmen's Compensation Act, the person entitled to compensation may claim compensation only under either of the two Acts and not under both Acts. The word may claim would impose an obligation on the person entitled to compensation has to make a sincere decision and opt for compensation under anyone of the statute.

15. In this case, the claimants had filed a claim application before the Workmen's Compensation Authority in W.C.No.58 of 2018 and by an Order dated 24.03.2022, the 4th respondent, owner of the Car was ordered to pay compensation of Rs.8,84,800/- with 12% interest from the date of petition and the same was duly complied with by the 4th respondent by depositing two cheques dated 26.04.2022 totalling for a sum of Rs. 13,59,538/-.

16. The claimants are at liberty to choose either Forum under Workmen's Compensation Act or under Motor Vehicles Act. The option exercised by the claimants under the Workmen's Compensation Act, at the



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first instance debars them from claiming compensation under Motor Vehicles Act, for the same cause of action.

17. Having exercised option to file a claim petition under the Workmen's Compensation Act, at the first instance and received the compensation also from the Joint Commissioner of Labour, Trichy, for the same cause of action, namely, for the death of Marimuthu, S/o.Murugesan, the claimants who are the dependents of Marimuthu are not permitted to pursue their claim under Motor Vehicles Act. It is not tenable in law.

18. Having appreciated the facts and circumstances, the Tribunal has rightly dismissed the claim petition which is clearly debarred under Section 167 of the Motor Vehicles Act. This Court does not find any good reason to disturb the findings of the Tribunal.

19. Based on the aforestated observations and discussions, this Civil Miscellaneous Appeal stands dismissed and the Order dated 11.11.2022 made in M.C.O.P.No.362 of 2021 by the Motor Accident Claims Tribunal / Mahila Court, Pudukkottai is confirmed. No costs.

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Index : Yes/No
Speaking / Non-speaking order

10/12



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R.KALAIMATHI, J.,

ssn

To

1. The Motor Accident Claims Tribunal,
Mahila Judge, Pudukkottai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

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