



C.M.A.No.626 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **17.08.2023**
PRONOUNCED ON : **30.08.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No.626 of 2022
and
C.M.P. No. 4479 of 2022

M/s.TATA AIG General
Insurance Company Limited,
Represented by its
Regional Manager,
Ethiraj Salai,
Ennore, Chennai

...Appellant/II Respondent

Versus

1.Saravanan
2.Uma Rani,
3.Anthony Amburose Raja

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 05.10.2021, passed in M.C.O.P.No.39 of 2019, by the Motor Accidents Claims Tribunal, (In the Court of Additional District Court – Fast Track Mahila Court) at Nagapattinam.



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For Appellant : Mr.J.Michael Visuvasam
For Respondents : Mr.N.Damodaran for R1 and R2.
No Appearance for R3.

J U D G M E N T

The above appeal has been filed by the second respondent/Insurance Company challenging the liability and quantum of compensation granted by the Tribunal in the award dated 05.10.2021 made in M.C.O.P.No.39 of 2019 on the file of the Motor Accidents Claims Tribunal (In the Additional District Court, Fast Track Mahila Court), Nagapatinam.

2. The respondents 1 and 2/claimants filed M.C.O.P.No.39 of 2019 on the file of the Motor Accident Claims Tribunal, (In the Additional District Court – Fast Track Mahila Court) at Nagapittinam claiming a sum of Rs.30,00,000/- as compensation for the death of one Subasakthi, who died in the road accident that took place on 30.01.2018.

3. According to the respondents 1 and 2/claimants on 30.01.2018 at about 4.00 P.M, when the deceased Subasakthi was driving the TATA Ace vehicle bearing Reg.No.PY 02 R 8677 proceeding from north to



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south, since the cows ran across the road, to avoid hit against them, he turned the vehicle towards left side, the vehicle turned turtle and resulted in the accident. He was initially admitted at Nagapattinam Government Hospital. Subsequently, he was referred to Thiruvvarur Medical College Hospital, where he was declared as brought dead. Hence the respondents 1 and 2 filed claim petition claiming compensation against the appellant and the 3rd respondent herein.

4. The appellant/Insurance Company filed counter statement denying all the averments made by the respondents 1 and 2 in the claim petition and stated that the accident had not occurred due to the rash and negligent driving of the 3rd respondent's vehicle; that the 3rd respondent did not possess valid driving license at the time of accident; that the owner of the vehicle/3rd respondent herein had violated the policy conditions; that the age, occupation and income of the deceased are denied; that the total compensation claimed by the respondents 1 and 2 is highly excessive and prayed for dismissal of the claim petition.



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5. The 3rd respondent herein/owner of the offending vehicle filed counter statement denying all the averments made by the respondents 1 and 2 in the claim petition and stated that he is the owner of the TATA Ace vehicle (offending vehicle) bearing Reg.No.PY 02 R 8677 and the same was driven by the deceased namely Subasakthi, who was employed under him; that the deceased joined duty just 10 days before the accident which happened on 30.01.2018; that the deceased had driven the vehicle in rash and negligent manner and dashed against a two wheeler bearing Reg.No.TN 81 B 4843 which resulted in the death of two riders as well; that the deceased did not possess any valid driving license and hence, he is not liable to pay compensation to the respondents 1 and 2/claimants.

6. Before the Tribunal, the respondents 1 and 2 examined two witnesses as P.W.1 and P.W.2 and marked eleven documents as Exs.P1 to P.11. The appellant/Insurance Company examined two witnesses as R.W.1 and R.W.2 and marked three documents as Exs.R1 to R3.

7. The Tribunal after considering the oral and documentary evidence, held that the accident occurred due to the rash and negligent



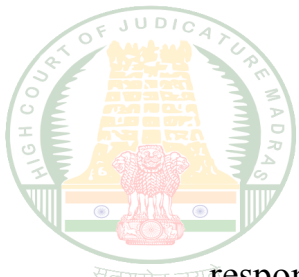
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driving by the driver of the offending vehicle (TATA Ace)/deceased, fixed 20% contributory negligence on him and directed the appellant and the 3rd respondent to jointly and severally pay a sum of Rs.10,57,261/- as compensation to the respondents 1 and 2/claimants.

8. Aggrieved by the said order, the appellant/second respondent has preferred the present appeal.

9. The learned counsel for the appellant/Insurance Company submitted that the Tribunal had erroneously converted a claim petition under Section 163-A of the Motor Vehicles Act, into one under Section 166 of the Motor Vehicles Act; that the Tribunal having found that the deceased was the tort-feaser had without any basis fixed his liability only to the extent of 20% and held that the appellant and the 3rd respondent herein were liable to pay 80% of the compensation amount; that the Tribunal after holding that the deceased did not have a valid driving license ought to have dismissed the claim petition against the appellant; and that in view of the Judgment of the Hon'ble Supreme Court in ***Beli Ram Vs. Rajender Kumar and another*** reported in ***2020 ACJ 3000***, the



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respondents 1 and 2/claimants are not entitled to compensation even under the Employees Compensation Act, 1923.

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10.The learned counsel for the respondents 1 and 2 submitted that the deceased was employed under the 3rd respondent; that the Act covered Legal Liability for Paid Driver in terms of IMT-28; that the 3rd respondent had paid additional premium of Rs.50/- for the said purpose; that the Tribunal therefore, was right in awarding compensation under Section 166 of Motor Vehicles Act, and relied upon the following Judgments:

(a).*Reliance General Insurance Co.Ltd Vs. Kathir and Another* reported in *2020 SCC Online Mad 4435*

(b) *The Branch Manager, United Insurance India Insurance Co. Ltd., Ariyalur Vs. Panjavarlam and The Branch Manager, United Insurance India Insurance Co. Ltd., Ariyalur Vs. Susheela and others* reported in *2017 SCC Online Mad 15004*.

(c) *National Insurance Co.Ltd., Vs.K.Anuradha and K.Anuradha Vs. V.Gopi* reported in *2016 SCC Online Mad 6325*.



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(d) *S.Iyyapan Vs. United Insurance Company Limited and*

another reported in (2013) 7 SCC 62 in support of his submissions.

11. Though notice has been served on the 3rd respondent, none has entered appearance on his behalf.

12. The questions involved in the instant appeal are:

(a) Whether the respondents 1 and 2 are entitled compensation under the Motor Vehicles Act or under the Employees Compensation Act?

(b) If they are entitled to compensation as to what would be the quantum?

13 (a).The admitted fact is that the deceased was the tort-feaser. The evidence adduced before the Tribunal and the fact that the respondents 1 and 2 filed a claim petition under Section 163-A of Motor Vehicles Act confirms the said fact. The Tribunal however, strangely fixed 20% contributory negligence on the deceased after holding that he was the tort-feaser and held that the 3rd respondent and the appellant



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were liable pay to 80 % of the compensation amount. This finding is without any basis and logic. As stated earlier, as seen from the evidence, the deceased had driven the offending vehicle (TATA Ace Van) in a rash and negligent manner and two persons who travelled in a two wheeler belonging to a third party involved in the accident died. Therefore, the appellant is not liable to pay compensation in a claim under Section 166 of the Motor Vehicles Act,.

(b). In the claim petition, the respondents 1 and 2 claimed that the deceased was earning more than Rs.25,000/- per month. In such circumstances, the claim petition is also not maintainable under Section 163-A of Motor Vehicles Act.

14. As per the Policy, the 3rd respondent had paid a premium of Rs.50/- for “Legal Liability for Paid Driver (IMT-28). The 3rd respondent in his counter before the Tribunal had admitted that the deceased was employed under him as a driver. The 3rd respondent also examined himself as R.W.1 and confirmed the said fact. There is no evidence to the contrary. Thus, the respondents 1 and 2 have established that the



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deceased was a paid driver. IMT – 28 reads as follows:

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IMT. 28. LEGAL LIABILITY TO PAID DRIVER AND/OR CONDUCTOR AND/OR CLEANER EMPLOYED IN CONNECTION WITH THE OPERATION OF INSURED VEHICLE (For all Classes of vehicles.)

In consideration of an additional premium of Rs. 25/- notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer shall indemnify the insured against the insured's legal liability under the Workmen's Compensation Act, 1923, the Fatal Accidents Act, 1855 or at Common Law and subsequent amendments of these Acts prior to the date of this Endorsement in respect of personal injury to any paid driver and/or conductor and/or cleaner whilst engaged in the service of the insured in such occupation in connection with the vehicle insured herein and will in addition be responsible for all costs and expenses incurred with its written consent.

Provided always that:-

- (1) this Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurer or group of insurers a Policy of Insurance in respect of liability as herein defined for insured's general employees,*
- (2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations;*



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(3) *the insured shall keep record of the name of each paid driver conductor cleaner or persons employed in loading and/or unloading and the amount of wages and salaries and other earnings paid to such employees and shall at all times allow the insurer to inspect such records on demand.*

(4) *in the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed.*

Subject otherwise to the terms conditions limitations and exceptions of the Policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988.

**In case of Private cars/motorised two wheelers (not used for hire or reward) delete this para.*

Thus, the Policy covered the legal liability of insured (3rd respondent) under the Employees Compensation Act, 1923. In view of the admitted position that the deceased was employed under the 3rd respondent and the accident took place during the course of employment, the 3rd respondent is liable to pay compensation under the Employees Compensation Act, 1923.



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15. This Court is of the view that since the respondents 1 and 2 are entitled to compensation under the Employees Compensation Act and not under the Motor Vehicles Act, the compensation can be determined in the instant appeal and awarded instead of directing the respondents 1 and 2 to approach the Commissioner under the Employees Compensation Act. The Division Bench of this Court in the case of ***Oriental Insurance Company Vs. Kaliya Pillai*** reported in ***(2004) 2 CTC 469 (DB)*** as well as another decision of the Division Bench Judgment of this Court in the case of ***M.Anbalagan Vs. A.S.Kamal Basha*** reported in ***(2015) 2 TN MAC 362 (DB)***, wherein the respective Division Benches have held that if the Court is of the view that compensation can be awarded under the Employees Compensation Act, it can do so in an appeal arising under Motor Vehicles Act.

16. The deceased was aged 20 years. The minimum wage at the relevant point of time i.e 30.01.2018 was Rs.8,000/-. The deceased was aged 20 years and the relevant factor is 224. The compensation to be paid under the Employees Compensation Act has to be determined in the following manner.



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Rs.8000 X 50/100 X 224 =Rs. 8,96,000/-

17. Further a sum of Rs.5,000/- is added under the head Funeral Expenses.

18. The question is whether the appellant is liable to pay compensation in view of the Insurance Policy. The fact is that the respondents 1 and 2 were unable to produce driving license of the deceased. The 3rd respondent/employer also could not produce the driving license. On the other hand, the 3rd respondent in his counter statement before the Tribunal had stated that the deceased had misled him and stated that he had valid driving license. Therefore, the finding of the Tribunal that the deceased did not have valid driving license cannot be faulted. The learned counsel for the appellant by relying upon the Judgment of the Hon'ble Supreme Court in **Beli Ram's case** (cited supra) submitted that since the 3rd respondent had not taken proper care in verifying whether his driver had a license, had committed the breach of terms of the policy of the Insurance Company and therefore,



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cannot be indemnified. There cannot be any dispute with the said proposition.

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19. However, the question is whether the appellant should be first asked to pay the compensation and thereafter, recover it from the insured. The Hon'ble Supreme Court in *Beli Ram's case* (cited supra) had only dealt with issue of liability and not with regard to whether a direction can be issued to the insurance company to pay and recover.

20. The Employees Compensation Act is a welfare legislation. As stated by the Hon'ble Supreme Court in *Beli Ram's case* (cited supra), the purpose of the Act is to provide immediate Succour to the workman or his legal heirs. The instant case is not one of no policy coverage but one of breach of policy conditions. Therefore, this Court is of the view that the Civil Miscellaneous Appeal deserves to be partly allowed and the compensation awarded by the Tribunal is reduced from 10,57,261/- to Rs.9,01,000/- together with interest rate at 7.5 per annum (excluding the default period if any) from the date of petition till the date the deposit. The appellant/Insurance Company is directed to pay the

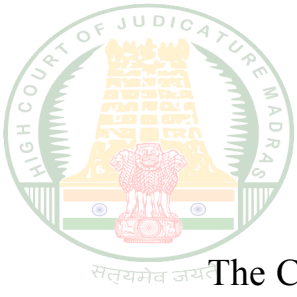


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award amount of Rs.9,01,000/- at first instance to the respondents 1 & 2, now determined under the Employees Compensation Act, and thereafter, recover it from the insurer. Therefore, the appellant is directed to deposit the compensation amount, now determined by this Court within a period of four (4) weeks from the date of receipt of a copy of this Judgment, at the first instance and recover the same from the third respondent. On such deposit, the respondents 1 and 2 are entitled to withdraw the same equally alongwith proportionate interest and costs. The appellant/Insurance company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.39 of 2019 on the file of Motor Accidents Claims Tribunal, (Additional District Court – Fast Track Mahila Court at Nagapattinam), if the entire award amount has already been deposited by them. No Costs. Consequently, connected miscellaneous petition is closed.

21. However, it is also not in the interest of Justice to direct the appellant to initiate separate proceedings for recovery. Hence, there shall be a direction to the Commissioner under the Employees Compensation Act to recover the compensation amount from the 3rd respondent herein as expeditiously as possible and pay it to the appellant.



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The Commissioner shall construe this direction as an application filed by the appellant under Section 31 of the Employees Compensation Act, 1923.

30.08.2023

dk

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

- 1.The Additional District Court – Fast Track Mahila Court,
Nagapattinam.
- 2.The Section Officer
VR Section
High Court of Madras
Chennai.
- 3.The Labour Commissioner,
Office of the Commissioner for Workmen Compensation Act,
Chennai.



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SUNDER MOHAN, J
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Civil Miscellaneous Appeal No. 626 of 2022
and
C.M.P. No. 4479 of 2022

Dated: 30.08.2023