

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.02.2022

PRONOUNCED ON : 08.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)Nos.1448 of 2016 and 166 of 2017

C.M.A(MD)No.1448 of 2016:

1.R.Geethabanu

2.R.Karthiyayini

3.Krishnarohini

.. Appellants

Vs.

Government of Tamil Nadu,
Commercial Tax Officer(Administration),
Commercial Tax Building,
Deputy Collector Building Campus,
Dindigul.

.. Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to call for the records from the file of the Deputy Commissioner of Labour, Madurai, in W.C.No.311 of 2008 and to modify the award of Rs.1,32,950/- passed in W.C.No.311 of 2008

dated 21.03.2014 passed by the learned Deputy Commissioner of Labour, Madurai to a total award of Rs.4,09,964/- or more as fixed by this Court and to award interest of 12% from 25.04.1998 with cost.

For Appellants : Mr.B.A.Mrurgantham

For Respondent : Mr.M.Sarangan
Additional Government Pleader

C.M.A(MD)No.166 of 2017:

1.Yamuna Devi(died)

2.Geetha Banu

3.Karthiyayini

4.Krishnarohini .. Appellants/Petitioners

Vs.

1.Abdul Raheem

2.The United India Insurance Company Ltd.,
Represented by its Branch Manager,
Paramakudi,
Ramanathapuram District.

3.Government of Tamil Nadu,
Represented by the Commercial Tax Officer,
Madurai.

.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated

22.04.2008 made in M.C.O.P.No.247 of 2008 on the file of I-Additional District Court, Madurai and to allow this CMA by directing the respondents before the tribunal to compensate the petitioner.

For Appellants	: Mr.B.A.Mrurganantham
For R2	: Mr.A.S.Mathialagan
For R3	: Mr.M.Sarangan Additional Government Pleader

COMMON JUDGMENT

C.M.A(MD)No.1448 of 2016:

Claim petitioners are the appellant herein seeking enhancement of compensation awarded in W.C.No.311 of 2008.

2.This Civil Miscellaneous Appeal against the award passed in W.C.No.311 of 2008 dated 21.03.2014 passed by the Deputy Commissioner of Labour, Madurai.

3.The claim petitioners are the legal representatives of Ramachandran, who worked as driver under the respondent, namely, the

Commercial Tax Officer, Government of Tamilnadu. While on duty, on 25.03.1998, he succumbed to injuries in the road accident in collision with his Zeep and Lorry. The manner of the accident and the factum of the accident are not in dispute.

4. As the legal heirs, the appellants herein filed the claim petition. In the said enquiry, Ex.B1-FIR, Ex.B2-Postmortem certificate, Ex.B3-Salary certificate, Ex.B4-Rough sketch, ExB5-Death certificate and Ex.B6-Transfer certificate were marked.

5. On consideration of both oral and documentary evidence, the Commissioner of Workman Compensation has awarded Rs.1,32,950/- along with Rs.1000/- towards funeral expenses and also awarded 12% of interest from the date of petition (08.10.2008) till the date of deposit and hence, this appeal.

6. The above Civil Miscellaneous Appeal was admitted on the following Substantial Questions of Law.

“a. Whether the learned Deputy Commissioner

is right in fixing the salary of the deceased?

b. Whether the learned Deputy Commissioner is right in neighbouring the award the interest to the award after one month from the date of the accident?"

7.The learned counsel appearing for the claim petitioners/appellants could contend that the petitioners are entitled to the compensation should have fixed the salary as Rs.5,835/- which was the salary of the petitioner's father, the deceased at the time of the accident. The learned Deputy Commissioner erred in calculating the compensation without any justification though he accepted the salary of the deceased as Rs.5,835/- but reducing it to Rs.2,000/- without any rationale. No reason was attributed to the reduction of the salary to Rs.2,000/- for computation of the compensation.

8. Per contra, the learned Additional Government Pleader appearing for the respondents could contend that on the date of accident, namely, 25.03.1998 as per the provisions under Section 4(1) explanation, the maximum ceiling for the monthly wages is Rs.40,000/-

and for the purpose of calculation 50% has to be taken as per provision under Section 4(1)(a) and hence made submission in support of the award.

9. After hearing both sides and also perusing the records, based upon the Ex.B6-Transfer certificate age of the deceased was fixed at 56 since the date of birth is 15.10.1942 and the accident was taken place on 25.03.1998. Age was determined as 58 and accordingly, the factum is fixed at 131.95.

10. The date of accident is 25.03.1998, the provision of law Workmen Compensation Act 1923 as to on the date of the accident. For easy reference Section 4(1)(a) is extracted hereunder:

Section 4(1)(a) of The Workmen' S Compensation Act, 1923:

“ (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:--
(a) where death results an amount equal to forty percent from the injury of the monthly wages of the deceased workman multiplied by

the relevant factor; or an amount of twenty thousand rupees, whichever is more;...

Explanation.-- Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.”

11. Initially the ceiling limit of salary was fixed at Rs.2,000/- and by way of amendment on 08.01.2000 Rs.2,000/- has been enhanced to Rs.4,000/- and subsequently by way of amendment came into force on 18.01.2010, the ceiling limit has been deleted. In view of the date of accident, I find that the ceiling limit of salary of Rs.4000/- alone has to be fixed and in view of the specific provision under Section 4(1)(a) of Workmen Compensation Act, 50% of the amount of monthly wages of the deceased could be multiplied by the relevant factor and hence, the calculation done by the Deputy Commissioner, namely $2000 \times 50 / 100 \times 131.95 = \text{Rs.}1,31,950/-$ is just and correct for the age of 55. For the funeral Rs.1000/- was awarded by the Commissioner since the date of accident is 25.03.1998, as applicable is proper. Accordingly, Rs.1,31,950 + Rs.1000

= Rs.1,32,950/-. As per the provision of the Act, the legal representatives of the deceased are entitled to interest of 12% from the date of accident, but the Deputy Commissioner has granted interest from the date of the petition. No doubt to prove that date of accident is 25.03.1998 and petition for compensation filed under the Act is 18.10.2008 roughly 10 years, however, the statutory provisions in respect of beneficial legislation has to be gone to the benefit of the employee and hence, this Court finds that the salary taken for commutation for compensation at the rate of Rs.2000/- is perfectly valid. In view of the law prevailing on the date of accident and the proper multiplication table has been adopted Rs. 1000/- has been granted towards funeral expenses and in respect of interest, it is from the date of accident, and hence this Civil Miscellaneous Appeal is dismissed. No Costs.

Provision of law:

12. It is settled law that claimants' claim under Workmen Compensation Act are not entitled for any compensation under the conventional heads except funeral expenses of Rs.5000/-.

13. In the decision of the Hon'ble Apex Court reported in **2012 (2) TNMAC 395 SC [Oriental Insurance Co. Ltd., v. Siby Charge and others]** the claimants are entitled to 12% only from the date of accident. The said decision is followed by our High Court in **2015 (2) TNMAC 674 [Divisional Manager, National Insurance Co., Ltd., v. M.Mutharasi and others]** and accordingly, interest of 12% is awarded from the date of accident.

C.M.A(MD)No.166 of 2017:

14. The very same claim petitioners have also filed M.C.O.P.No. 247 of 2000 before the learned I-Additional District Judge, Madurai, claiming compensation under Section 163 A of the Motor Vehicles Act treating it as a Road Transport Accident and filed against the owner of the offending vehicle and insurance company along with the employer of the deceased as the third respondent. By an order, dated 22.04.2018, the learned I-Additional District Judge has dismissed the MCOP holding that the accident occurred in the course of the employment and the deceased was employed in the Government Department and he is a workman and

hence, opportunity was granted to work out his remedy under the Workmen's Compensation Act. Challenging the said findings, the appellants have preferred this Civil Miscellaneous Appeal.

15. The learned counsel for the Insurance Company could contend that the claim petitioners cannot file a claim petition under Motor Vehicles Act and another claim petition under Workmen's Compensation Act.

16. Our High Court in C.M.A(MD)No.443 of 2012 dated 24.09.2018 has held that the claimants can claim only from his employer under Workmen's Compensation Act. But he is not debarred from claiming compensation under the Motor Vehicles Act against the tort-feasor.

17. In the accident case, the claimants/petitioners have filed MCOP against the owner of the lorry, who is not his employer and insurer of the lorry, which hit the deceased, seeking compensation. Further, they also filed Workmen's Compensation against the employer of

the deceased and obtained compensation, against, which they filed the other connected Civil Miscellaneous Appeal.

18. M.C.O.P.No.247 of 2000 before the learned I-Additional District Judge, Madurai, was filed under Section 163A of the Motor Vehicles Act. On the date of the accident, the deceased was gaining Rs.5835/- and his annual income is around Rs.60,000/- which is over and above the annual ceiling limit fixed under Section 163A, namely Rs.40,000/-. The claim petition is not maintainable if the annual income exceeds Rs.40,000/-. The said law has been settled in various judicial pronouncement and hence, the learned I-Additional District Judge, has dismissed the petition with liberty to move under the Workmen's Compensation Act.

19. In this connection, I find that the decision of the Hon'ble Division Bench of this Court in ***United India Insurance Co., Ltd., vs. Anthony Selvam*** reported in ***2014 (2) TN MAC 227*** wherein it has been held as follows:-

"23. From an analysis of the above said judgments

and the reasoning assigned by this court, the principles governing the election provided under Section 167 of the Motor Vehicles Act, 1988 and the corresponding bar can be deduced as follows:

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 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 negated 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, 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."

20. The Insurance Company has raised the point for consideration

whether the claim petitioner can move application for claim petition both under the provisions of the Motor Vehicles Act and the Workmen's Compensation Act. My attention was drawn to the decision of this Court in C.M.A.(MD)No.443 of 2012 [*Divisional Manager, New India Assurance Company Limited vs. Astalingam and others*], wherein the learned Single Judge of this Court has held that the claim petition under both the provisions of the Act are maintainable based upon the decision of Rajasthan High Court in *New India Assurance Co., Ltd., vs. Bidami (in short Bidami's case)* reported in *2009 SCC Online Raj.3440*. It appears that the Insurance Company has preferred a Special Leave Petition against the above said decision in Special Leave to Appeal (Civil) No(s).1271/2010 before the Hon'ble Supreme Court and the Hon'ble Supreme Court has set aside the above order by an order dated 17.04.2014.

21. The said order passed by the Hon'ble Supreme Court was not brought to the notice of the learned single Judge, who passed the order in the above referred **Astalingam's** case dated 24.09.2018. Since the judgement of the Hon'ble Supreme Court, dated 17.04.2014 and the

subsequent order passed by the learned Single Judge of this Court in the above case is on 24.09.2018, without noticing the above said judgment of the Hon'ble Supreme Court, wherein the judgment of the Rajasthan High Court was set aside, I have no other option to hold that the decision rendered by this Court in Astalingam's case (C.M.A(MD)No.443 of 2012) is *per incuriam*. In the above said judgment of the Hon'ble Supreme Court, it is observed as under:

“Special Leave to Appeal (Civil) No(s).1271/2010 before the Hon’ble Supreme Court and their Lordships of Hon’ble Supreme Court allowed the special appeal and quashed the judgment passed by the Coordinate Bench of this Court by observing thus:- “Learned counsel for the appellant relies on judgment of this court titled as National Insurance Company Limited versus Mastan and another, reported in 2006(2) SCC 641 in support of the submission that if both the remedies under the Motor Vehicles Act, 1988 and the Workmen’s Compensation Act, 1923, are available, the respondents were required to opt for either one of the remedies. The respondents cannot claim compensation under both the acts.

In the aforesaid judgment, it is held as under:-

“22. Section 167 of the 1988 Act statutorily

provides for an option to the claimant stating that where the death of or bodily injury to any person gives rise to a claim for compensation under the 1988 Act as also the 1923 Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Section 167 contains a non obstante clause providing for such an option notwithstanding anything contained in the 1923 Act. 23. The “doctrine of election” is a branch of “rule of estoppel”, in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both. Although there are certain exceptions to the same rule but the same has no application in the instant case.” In view of the above, the judgment of the High Court cannot be sustained. In view of the above, we allow this appeal and set aside the judgment of the High Court.”

22. I held that in view of the judgement of the Hon'ble Supreme Court, the above said Bidami's case reported in **2010 (1) TNMAC 645 (Raj) [New India Assurance Co., Ltd., vs. Bidami]** and the decision reported in **2005 (1) TNMAC (Guj) [Nasimbanu v. Ramjibhai Bahubhai Ahir]** and the decision of this Court in C.M.A(MD)No.443 of 2012 in **Astalingam's** case is no longer good law.

23. Accordingly, the point raised by the appellant Insurance Company is answered accordingly and claim petition simultaneously or one after another cannot be maintained. In the instant case, the claim petition filed under the Motor Vehicles Act was dismissed on the ground that the salary of the deceased was exceeding the statutory limit and liberty was given to move under the Workmen's Compensation Act and hence on the facts and circumstances of the case, the order passed by the learned I-Additional District Judge giving liberty while dismissing the claim petition filed under the Workmen's Compensation Act to be maintainable.

24. Hence both the points raised by the Insurance Company is ordered accordingly.

25. In fine,

(i) C.M.A(MD)No.1448 of 2016 filed against the award passed in the claim filed under the Workmen's Compensation Act is dismissed holding that the compensation fixed by the Deputy Commissioner of Labour is just and fair.

(ii) C.M.A(MD)No.166 of 2017 filed against the fair and decreetal order passed in the claim petition filed under Motor Vehicles Act in M.C.O.P.No.247 of 2000 is also stands dismissed as not maintainable under Section 163 A of the Motor Vehicles Act, as hold by the Tribunal *[I-Additional District Judge] and the judgment and decree passed in the M.C.O.P.No.247 of 2000 by the Tribunal is hereby confirmed. No Costs.*

08.04.2022

Index :Yes/No
Internet :Yes/No
PJL

RMT.TEEKAA RAMAN.,J.

PJL

To

- 1.The I-Additional District Judge, Madurai.
- 2.The Deputy Commissioner of Labour, Madurai.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

**PRE-DELIVERY JUDGMENT
MADE IN
C.M.A(MD)Nos.1448 of 2016
and 166 of 2017**

08.04.2022