

BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL & V
ADDL. JUDGE SCCH-20, Mayo Hall Unit, Bengaluru.

Dated this the 22nd day of March, 2019

Present: **Smt. A.G.SHILPA, B.A., LL.B.,**
V Addl. Small Causes Judge &
XXIV A.C.M.M., Member, M.A.C.T.,
Bengaluru.

ECA. No.01/2018

PETITIONER:

1. Smt. Vinutha A.U.
W/o Late Vinayakumar,
Aged 24 years,
2. Sri Shivanandappa
S/o Late Narasappa
Aged 52 years
3. Jayalakshamma@ Jayalakshmi
W/o Shivanandappa
Aged 52 years
4. Palaksha.S
S/o Shivanandappa
Aged 36 years

All are residing at Kodimanchenahalli
Village, Davanahalli Taluk,
Bangalore Rural Dist
Bangalore – 562110.

(By pleader Sri M.K.Nagendra Kumar, Adv.)

-V/s-

RESPONDENTS:

1. Sri Nataraj S/o Rudrappa
Since dead by his Legal
representatives
Smt Mamatha W/o Late Nataraj
No.09, Gundasandra Hanabe Post
Gundasandra, Bangalore rural
Bangalore – 561203.

2.. M/s. United India Insurance
Company Ltd, No.24, Whittes Road,
Chinnaia 600014

3.. M/s. United India Insurance
Company Ltd., SBLT Building,
Polytechnic Road, B O Chinthamani
(071502), Kolar – 563125

(R-1 : Exparte)

(R-2 & 3: By pleader Sri Janardhan Reddy., Adv.)

JUDGMENT

The Petitioner has filed the present petition as against the Respondents No.1 and 2 under Section 22 of the Workmen's Compensation Act, 1923, praying to grant compensation with interest at the rate of 18% and cost.

2. The brief averments of the Petitioner's case are as follows;

It is submitted that the 1st petitioner is the wife, 2nd & 3rd petitioners are parents and 4th petitioner is brother of the deceased. The 1st Respondent is employer of the deceased. The deceased was working as driver of Tipper Lorry bearing Reg No: KA-01-AE-8029 under 1st Respondent. The RC owner of the Tipper Lorry and 2nd Respondent is the Insurance Company, with whom the vehicle was insured

It is their case that the deceased came with the RC owner of Tipper Lorry to Bangalore in order to deliver sand. on 12/4/2017 at 11.15 PM, Near Vani Bar and Restaurant, Kamalanagar, Basaveshwaranagar, Bangalore the deceased was driving the Tipper Lorry and suddenly he lost control due to mechanical defect or reason best known to him and dashed Vani Bar & Restaurant, due to which both RC owner and deceased died.

The Vijayanagar Police register FIR vide crime No: 180/2017 dtd: 13/4/2017 on basis of information given by 4th Petitioner and Police also filed abated charge sheet against the deceased. The deceased held valid DRIVING LICENSE and badge to drive transport and non transport . The vehicle had a proper and valid policy , fitness certificate, Tax paid, challan and permit as on the date of accident. The accident took place within the course of employment. Therefore, this petition is filed.

In pursuance of the claim petition, this court issued notice to respondent No.1 and 2. The respondent No.1 is placed exparte and 2nd Respondent appeared through pleader and filed written statement.

3. Brief averments of the written statement of 2nd Respondent are as follows:

The 2nd respondent denied all petition allegations and took defense that there is no relationship of employer and

employee and petition is not maintainable. The deceased driver Vinayakumar KS was not the driver at the time of alleged accident and he was brother in law of the deceased, in case the petitioners are able to prove at the time of alleged accident the deceased was the driver with 1st respondent, even in that case the deceased did not had valid DRIVING LICENSE or badge and thereby violated terms and conditions of policy. There was no fitness certificate to the vehicle. In case of deceased was workmen, the wages of the driver has notified by the Government of Karnataka vide Notification No. KA-E-34-LMW-1998 dtd: 12/6/2002 should be taken into consideration . dHowever, the petition is not maintainable on merit. Therefore, the petition may be dismissed as against 1st respondent.

4. Based on the above said pleadings, I have framed the following Issues;

ISSUES

1. Whether the claimant is a workman under section 22 of the Workmen's Compensation Act, 1923?

2. If so, whether the accident has occurred during the course of employment and out of the employment?
3. What was the age of the claimant at the time of accident? And what was his monthly income
4. Whether the claimant proves that they are entitled for the Compensation as claimed?
5. Whether the claimant is entitled for the interest and penalty on the compensation claimed under section 4(A) of the Workmen's Compensation Act, 1923?
6. If awarded, who is liable for payment of compensation, Interest and penalty?
7. What Order?

5. In order to prove his case, the Petitioner himself has been examined as P.W.1 marked Ex.P.1 to Ex.P.16. The Respondents not adduced any evidence on their behalf.

6. Heard the arguments of both side and perused the records.

7. My answers to the above said Issues are as follows;

Issue No.1 : In the Affirmative,
Issue No.2 : In the Affirmative,
Issue No.3 : In the Affirmative,

Issue No.4 : In the Affirmative,
Issue No.5 : In the Affirmative,
Issue No.6 : Partly in the Affirmative,
Issue No.7 : As per the final Order,
for the following;

REASONS

8. **ISSUE No.1**: At the outset, employer and employee relationship determination is pre requisite . The PW1 is none other than wife of the deceased. She filed evidence affidavit reiterating the petition averments and narrated about the accident. To substantiate her case, she produced Ex.P.1 FIR & Ex.P.2 first information statement. The Vijayanagar Police the FIR in Crime No: 180/2017 against the deceased himself, driver of the Tipper Lorlry for committing an offence punishable under Section 279, 304A of IPC on basis of the First Information Statement of Mr.Palaksha, 4th Petitioner. However, to know that claimant is a workman to seek relief under Section 2(i) (n) of the workman compensation Act 1923, prudence requires corroboration.

9. It is important to note that the petitioner claim the husband of the 1st respondent was the employer of the deceased. The 1st respondent remained absent and placed exparte. She did not specifically deny or admit all the allegations made in the petition . It can be construed as admitted the petitioner's claim. The RC owner of the tipper Lorry Mr Nataraj is none other than brother-in-law of the deceased. Both had come to Bangalore in the Tipper Lorry to deliver the sand. The 1st respondent is the wife of decease Nataraj, representing him since dead by his Legal representatives.

10. This extract is taken from *Oriental Insurance Co. Ltd. v. Meena Variyal*, (2007) 5 SCC 428 : (2007) 2 SCC (Cri) 527 at page 439

As we understand Section 147(1) of the Act, an insurance policy hereunder need not cover the liability in respect of death or injury arising out of and in the course of the employment of an employee of the

person insured by the policy, unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver, also the conductor, in the case of a public service vehicle, and the one carried in the vehicle as owner of the goods or his representative, if it is a goods vehicle. It is provided that the policy also shall not be required to cover any contractual liability. Uninfluenced by authorities, we find no difficulty in understanding this provision as one providing that the policy must insure an owner against any liability to a third party caused by or arising out of the use of the vehicle in a public place, and against death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of vehicle in a public place. The proviso clarifies that the policy shall not be required to cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is

provided to the last foregoing to the effect that the policy must cover a liability arising under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage. Section 149(1), which casts an obligation on an insurer to satisfy an award, also speaks only of award in respect of such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy). This provision cannot therefore be used to enlarge the liability if it does not exist in terms of Section 147 of the Act.

This extract is taken from **Bank of Baroda v. Ghemarbhai Harjibhai Rabari, (2005) 10 SCC 792 : 2005 SCC (L&S) 963 at page 792.**

This appeal arises out of a reference made to the Central Industrial Tribunal, Ahmedabad, in regard to the termination of services of the respondent herein. The said reference culminated in an award directing the appellant herein to reinstate the respondent herein in service at his original post with continuity of service and full back wages. A challenge to the said award made before a learned Single Judge of the Gujarat High Court by way of a writ petition came to be dismissed. A further appeal filed before a Division Bench of the same High Court also came to be dismissed, hence, this appeal.

Before the Industrial Tribunal, the respondent claimed that he was working with the appellant Bank as a driver on a salary of Rs. 1500 p.m. driving a car

belonging to the Bank allotted to one of its officers by name Mr Menon. He claimed that he worked in that capacity from July 1994 to October 1995, and the salary paid to him was debited to the account of the Bank in its books. He also claimed that from October 1995 his services were illegally terminated without paying any compensation under Section 25-A of the Industrial Disputes Act (the Act) and in violation of Sections 25-G and 25-H of the Act and on that basis he claimed his reinstatement with full back wages.

Held in para - 8. While there is no doubt in law that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman, the degree of such proof so required, would vary from case to case. In the instant case, the workman has established the fact which, of course, has not been denied by the Bank, that he did work as a driver of the car belonging to the Bank

during the relevant period which comes to more than 240 days of work. He has produced 3 vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the Bank. As against this, as found by the for below, no evidence whatsoever has been adduced by the Bank to rebut even this piece of evidence produced by the workman. It remained contented by filing a written statement wherein it denied the claim of the workman and took up a plea that the employment of such drivers was under a scheme by which they are, in reality, the employee of the executive concerned and not that of the Bank; none was examined to prove the scheme. No evidence was led to establish that the vouchers produced by the workman were either not genuine or did not pertain to the wages paid to the workman. No explanation by way of evidence was produced to show for what purpose the

workman's signatures were taken in the register maintained by the Bank. In this factual background, the question of the workman further proving his case does not arise because there was no challenge at all to his evidence by way of rebuttal by the Bank.

Therefore, it is clear in order to be a workman under the Workmen's Compensation Act in India he has to satisfy certain conditions laid down in the definition of section 2(n) read with the second schedule under the Act. But then all drivers are not workmen. There has to be an employment. He is to have an employer within the definition of section 2(e) of the Workmen's Compensation Act and also section 3 thereof.

12. This extract is taken from Ved Prakash Garg v. Premi Devi, (1997) 8 SCC 1 at page 15, Labour law –

Workmen's compensation 1923 – Section 4 – A (3) – when applies.

Held in para 14. “On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the insurance companies will be liable to make good not only the principal amounts of compensation payable by insured employers but also interest thereon, if ordered by the Commissioner to be paid by the insured employers. Reason for this conclusion is obvious. As we have noted earlier the liability to pay compensation under the Workmen's Compensation Act gets foisted on the employer provided it is shown that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. Such an accident is also covered by the statutory coverage contemplated by Section 147 of the Motor Vehicles Act read with the

identical provisions under the very contracts of insurance reflected by the policy which would make the insurance company liable to cover all such claims for compensation for which statutory liability is imposed on the employer under Section 3 read with Section 4-A of the Compensation Act. All these provisions represent a well-knit scheme for computing the statutory liability of the employers in cases of such accidents to their workmen. As we have seen earlier while discussing the scheme of Section 4-A of the Compensation Act the legislative intent is clearly discernible that once compensation falls due and within one month it is not paid by the employer then as per Section 4-A(3)(a) interest at the permissible rate gets added to the said principal amount of compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his

liability for the benefit of the claimants whose breadwinner might have either been seriously injured or might have lost his life. Thus so far as interest is concerned it is almost automatic once default, on the part of the employer in paying the compensation due, takes place beyond the permissible limit of one month. No element of penalty is involved therein. It is a statutory elongation of the liability of the employer to make good the principal amount of compensation within permissible time-limit during which interest may not run but otherwise liability of paying interest on delayed compensation will ipso facto follow. Even though the Commissioner under these circumstances can impose a further liability on the employer under circumstances and within limits contemplated by Section 4-A(3)(a) still the liability to pay interest on the principal amount under the said provision remains a part and parcel of the statutory liability which is legally

liable to be discharged by the insured employer. Consequently such imposition of interest on the principal amount would certainly partake the character of the legal liability of the insured employer to pay the compensation amount with due interest as imposed upon him under the Compensation Act. Thus the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and not dehors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer qua his statutory liability to pay compensation to the claimants in case of such motor accidents to his workmen, the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within one month from the date it fell due, would not be a part

of the insured liability of the employer. No question of justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated under Section 4-A(3) may start running for the purpose of attracting interest under sub-clause (a) thereof in case where provisional payment has to be made by the insured employer as per Section 4-A(2) of the Compensation Act from the date such provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us earlier then Section 4-A(2) would not get attracted and one month's period would start running from the date on which due compensation payable by the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in such contingencies not only from the date of the award

but also from the date of the accident concerned. Such an order passed by the Commissioner would remain perfectly justified on the scheme of Section 4-A(3)(a) of the Compensation Act. But similar consequence will not follow in case where additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated by Section 4-A(3)(b) of the Compensation Act after issuing show-cause notice to the employer concerned who will have reasonable opportunity to show cause why on account of some justification on his part for the delay in payment of the compensation amount he is not liable for this penalty. However, if ultimately, the Commissioner after giving reasonable opportunity to the employer to show cause takes the view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay and due to his own personal fault he is

held responsible for the delay, then the penalty would get imposed on him. That would add a further sum up to 50% on the principal amount by way of penalty to be made good by the defaulting employer. So far as this penalty amount is concerned it cannot be said that it automatically flows from the main liability incurred by the insured employer under the Workmen's Compensation Act. To that extent such penalty amount as imposed upon the insured employer would get out of the sweep of the term "liability incurred" by the insured employer as contemplated by the proviso to Section 147(1)(b) of the Motor Vehicles Act as well as by the terms of the insurance policy found in provisos (b) and (c) to sub-section (1) of Section II thereof. On the aforesaid interpretation of these two statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured

employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner, Sections 3 and 4-A(3)(a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by Section 4-A(3)(b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner.

13. In all the aforesaid cases when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner, Sections 3 and 4-A(3)(a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. In this case, the deceased was an employee and accident had occurred due to self negligence but in the course of his employment. The husband of the 1st Respondent who is RC owner of the Tipper Lorry is also an employer and the deceased was his driver. There is no bar his brother in law/ deceased was employed to drive the Tipper Lorry and employment is within the family. These facts are not in dispute. The deceased was employed by the 1st Respondent's husband and he met ROAD TRAFFIC ACCIDENT during the course of employment. Therefore,

without any further discussion, I answer Issue No.1 in **AFFIRMATIVE.**

14. Issue No.2:- As already discussed aforesaid, the police documents clearly establish that accident occur during the course of employment.

15. In this case, the dictum of law discussed aforesaid squarely applied for the purpose of bringing this case under the definition of “accidental Death”. Because the petitioner was employed by the 1st respondent’s husband as a driver of Tipper Lorry and admittedly the deceased lost control of the Tipper Lorry and thereby accident occurred. The 1st Respondent’s husband also died along with deceased in the accident. It is an “accident” for the purpose of claiming compensation and the death has taken place during the course of employment. Therefore, I answer Issue No: 2 in the **AFFIRMATIVE.**

16. Issue No.3, 4, 5 & 6: As per Ex.P.9 and Ex.P.10. the deceased was born on 24/6/1981 and his age was 36 years at the time of accident. These documents are not in dispute. Therefore, age of the deceased is accepted as 36 years at the time of accident.

17. In this case of MFA No.3053/2007 (MV)(UICL Vs Smt.Tulasidevi) compensation u/s 166 was denied to the claimants legal representatives of the deceased since the accident occurred due to driver deceased. The charge sheet was filed against deceased and attained finality as it has not been challenged by the claimants. Held, the present claim petition is filed U/s 22 of Employees Compensation Act.

“Sec.167 of Motor Vehicles Act 1988 Notwithstanding anything contained in the Workmen’s Compensation Act, 1923 (8 of 1923) where the death 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 those Acts but not under both. This claim petition has been filed by the petitioner claiming compensation for death of deceased who was employee of 2nd respondent in an accident arising out of his course of employment. The petitioners have chosen to file petition Workmen compensation Act. The legal heirs of deceased workmen do not have to establish negligence as pre condition for award of compensation. But, claim before MACT is action in tort and legal heirs of the deceased have to establish by preponderance of evidence that there was no negligence on part of deceased and he was not responsible for accident. Except to Gen rule in sec.14 of Act whether the Legislature has made provisions for payment no fault

liability. As seen from insurance policy terms and conditions it covers driver of cab. The 2nd respondent got cab insured by paying amount of premium covering the driver. Therefore, it indicate the liability of insurance company to cover liability of driver under Workmen Compensation Act U/s 147(1)(b) held valid policy. Sec. 149 of Act imposes duty upon insurance company to satisfy the Judgment and award against persons insured in respect to driver. Therefore, petitioners are entitled to claim compensation under Workmen Compensation Act”.

18. There is no evidence as to the actual wages, therefore, I have taken notional income of Rs.7000/- . As per sec 4(1)(a) compensation 1923, death resulted from accident therefore an amount equal to 50% of the monthly wages of the deceased by the relevant factor or an amount of Rs.1,20,000/- whichever is more shall be considered.

Therefore, the income per month comes to **Rs.7000 x 50%**
= 3500/-. At the time of accident the age of the deceased was 36 years. The applicable multiplier corresponding to the said age is 194.64 as per schedule IV (Sec.4) . Therefore, the loss of dependency arising out of the death of the deceased for monthly income of Rs.3500/- by applying the multiplier **194.64** comes to **Rs.6,81,240/-**.

19. As per Section 4(4) of the Employees' compensation Act 1923 Employer shall pay not less than Rs.5,000/- towards accident of the funeral of the deceased employee. Therefore, the petitioners are entitled for **Rs.5000/-** towards funeral expenses.

20. **In this way, the petitioners are entitled for following amount of compensation.**

- 1) Loss of dependency : Rs. **6,81,240-00**
- 2) Funeral expenses : Rs. 5,000-00

In all petitioners are entitled for compensation to Rs.6,86,240/- which can be rounded to **Rs.6,87,000/-**.

21. The 1st Respondent is aware of the employment, accident and the death of the deceased happened in the course of employment. Being aware the present case, she has neither deposited required compensation within the stipulated time nor intimated the incident to concerned authority in accordance with law and the 2nd Respondent did not enter the witness box to lead evidence, thus, it is just, proper and necessary to award interest at 9% p.a. of the said compensation amount from date of suit till the deposit the said compensation amount. Therefore, the petitioners are entitled for total compensation to **Rs.6,87,000/-** along with interest at the rate of 9% p.a. from date of petition till realization.

22. The 1st Respondent and 2nd respondent clearly admitted that deceased Mr Nataraj / RC owner had

obtained the Insurance policy from the 2nd respondent company. The policy was in force as on the date of accident. There is no violation of terms and conditions of the policy. Under these circumstances, it can be safely held that the risk of deceased/driver of the Tipper Lorry, is covered under the Insurance policy. The Respondent No.1 & 2 are jointly and severally liable to pay compensation cost and interest to petitioners. Since the Respondent No.2 is Insurance Company primarily duty is upon the 2nd respondent to pay compensation interest and cost. Thus, I answer Issue No: **3, 4, 5 & 6 in the Affirmative.**

23. **Issue No.7:** In view of my findings on Issue No.1 to 6, I proceed to pass the following:

ORDER

The petition filed by the petitioners under Section 22 of the Workmen/Employer compensation Act., 1923 is hereby partly allowed with cost.

The petitioners are entitled for compensation of **Rs.6,87,000/-** with interest at the rate of 9% p.a. from the date till the date of payment from the 2nd Respondent.

The Respondent No.2 shall deposit the said compensation and interest in this tribunal within Thirty days from the date of order.

The petitioner No.1 being wife is entitled for Rs.2,57,000/- and petitioners 2 & 3 are entitled for Rs.2,00,000/- each towards loss of dependency and 4th Petitioner is entitled for Rs.30,000/- for his love and affection towards brother along with interest.

In the event of deposit of compensation and interest entire share along with the interest relating to petitioner No.1 to 4 shall be released in their favour through an A/c payee cheques on proper identification.

The Advocate Fees at Rs.3000/-.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by him, corrected by me and then pronounced in open court on this the 22nd day of March 2019)

(A.G.SHILPA,)

V ASCJ & Member, MACT,
Court of Small Causes,
Mayo Hall Unit, Bengaluru.

A N N E X U R E:

Witnesses examined for petitioners:

P.W.1 : Vinutha A.U.

Documents marked for petitioners:

Ex.P.1 : Certified copy of the FIR

Ex.P.2 : Certified copy of the FIS

Ex.P.3 : Certified copy of the spot sketch

- Ex.P.4 : Certified copy of the spot mahazar
Ex.P.5 : Certified copy of the Inquest Report
Ex.P.6 : Certified copy of the IMV report
Ex.P.7 : Certified copy of the PM report
Ex.P.8 : Certified copy of the Charge sheet
Ex.P.9 : Notari. copy of Adhaar card of the Deceased
Ex.P.10 : Notari. copy of DL of the Deceased
Ex.P.11 : Original death certificate
Ex.P.12 : Notarized copy of Adhaar card of the pet.
To 15
Ex.P.16 : Notarized copy of ration card

Witnesses examined for respondents: Nil

Documents marked for respondents: Nil

(A.G.SHILPA,)
V ASCJ & Member, MACT,
Court of Small Causes,
Mayo Hall Unit, Bengaluru.