IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.02.2017

CORAM

THE HON'BLE Dr.JUSTICE S.VIMALA

C.M.A.No.847 of 2017

M/s.Oriental Insurance Co. Ltd.,
Erode. ... Appellant/3rd respondent

Vs.

1.Santhi
2.Saratha
3.Palanisamy
4.N.K.Mani
[R3 exonerated in the lower Court] ... Respondents/
petitioner 1 & 2 and
Respondent 1 & 2

Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.06.2003 made in M.C.O.P.No.363 of 1998 on the file of the Motor Accident Claims Tribunal, [II Additional District Judge], Erode.

For Appellant : Ms.R.Sreevidhya
For Respondent : No Appearance

J U D G M E N T

The award dated 30.06.2003 passed in M.C.O.P.No.363 of 1998 by the file of the Motor Accident Claims Tribunal, [II Additional District Judge], Erode, is being challenged in the present Civil Miscellaneous Appeal.

2.The claim petition has been filed by the legal heirs of the deceased Kamala @ Kamalam, who was aged 47 years, working as coolie, earning a sum of Rs.1,500/= per month, claiming a sum of Rs.1,00,000/- as compensation.

3.The Tribunal, considering the oral and documentary evidence available on record, awarded a sum of Rs.81,000/- as compensation, the break up of which is as under :-

1.Loss of earning [500x12x11]		Rs.66,000/-
2.Funeral expenses		Rs. 5,000/-
3.Love and affection		Rs.10,000/-
	Total	Rs.81,000/-

4. Questioning the liability of the insurer to pay the compensation, the present appeal has been filed.

5. Ex.B4 the Insurance Policy reveals that premium has been collected by the Insurance Company in respect of seven workmen to travel in the vehicle in addition to one non-gratuitous passenger. The said part of the insurance policy has been dealt with by the Tribunal and the Tribunal has made a specific observation that the insurance policy covers the liability for seven workmen and also one non-gratuitous passenger. In the facts of the case, the Tribunal was not inclined to rely upon the decision reported in 2003[i] Civ.C.R.487[SC] [New India Assurance Company Limited Vs Asha Rani and Others] regarding the non-liability of the Insurance Company for paying compensation to gratuitous passenger. The Tribunal held that the said decision is not applicable to the facts of this case.

6. A perusal of the records as also the order passed by the Tribunal reveals that the Tribunal has given a specific finding that the deceased was travelling in the goods vehicle only as a coolie i.e., as an employee, which finding has been arrived on appreciation of the evidence of P.W.1, P.W.2 and R.W.1. When the claimant has been proved to be an employee, the contention of the Insurance Company that it is not liable to pay compensation on account of the fact that the claimant had been a gratuitous passenger, cannot be accepted. The insurance company has not substantiated its contention by adducing acceptable evidence and in the absence of the same, no interference is called for with the finding of the Tribunal.

7. Further, the insurance company has filed the present appeal raising the following grounds :

> "2. The learned Tribunal has failed to note that the deceased was a fare-paying passenger and hence the insurer cannot be made liable to pay the compensation.
>
> 3. The learned Tribunal has failed to note that both in the FIR Ex.A1 as well as in the oral evidence of P.W.2 it is admitted that the deceased had travelled in the vehicle on payment of charges to bring holy water and in that process had sustained fatal injuries.

5. The learned Tribunal has failed to appreciate the evidence of R.W.1 and R.W.2 properly and failed to note the vehicle was proceeding to Cauvery river.

6. The learned Tribunal has failed to note that the liability was not required to be covered under Sec.147 of M.V. Act nor covered under the policy and as such the petition is as against the appellant is not maintainable under law."

8. The above grounds raised by the insurance company are against the materials available on record, which has been relied on by the Tribunal to arrive at the abovesaid finding. In the absence of any acceptable reason substantiating the grounds raised by the appellant, this Court is not inclined to interfere with the order passed by the Tribunal. There being no merit, this appeal is liable to be dismissed and, accordingly, the same is dismissed.

9. The Appellant/Insurance company is directed to deposit the entire award amount along with interest and costs as awarded by the claims Tribunal, less the amount, if any, already deposited, to the credit of the claim petition 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 award amount directly to the bank account of the claimants through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

gya/GLN

To
1.THE MOTOR ACCIDENT CLAIMS TRIBUNAL,
[II ADDITIONAL DISTRICT JUDGE], ERODE.

2.THE SECTION OFFICER,
V.R.SECTION, HIGH COURT,
MADRAS.(2 COPIES)

C.M.A.No.847 of 2017

NM(CO)
TR(23/02/2018)