

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.441 of 2008

The Divisional Manager,
The New India Assurance Company Ltd.,
Tiruvannamalai District.

...Appellant/2nd Respondent

Vs

1.Mahaboobee

2.Enayath Basha @ Enayathulla (Minor)

3.Minor.Najeemabee

4.Minor.Ayub Basha
(2 to 4 Respondents Minor rep by
their Mother and next friend Mahaboobee)

5.Abdul Samath ... 1 to 5 Respondents/Petitioners

6.S.K.Sheik Amanullah ...6th Respondent/1st Respondent

7.The Managing Director,
Tamil Nadu Bus Transport Corporation,
Kanchipuram District - 631 501.
...7th Respondent/3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.08.2007 made in M.C.O.P.No.976 of 2006 on the file of the Motor Accident Claims Tribunal (District Judge) at Tiruvannamalai District.

For Appellant : Mr.K.Padmanabhan

For Respondents : Mr.F.Terry Chella Raj for R1 to R4
R5 - (died)
Mr.V.R.Appaswamy for R6
Mr.S.Saravanan for R7

JUDGMENT

The instant appeal has been filed challenging the Award dated 22.08.2007 passed by the Motor Accident Claims Tribunal (District Judge) at Tiruvannamalai District in M.C.O.P.No.976 of 2006.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i) One Abdul Kalam died on 05.05.2006 as a result of an accident caused by a van bearing Registration No.TN-25-X-9786 owned by the sixth respondent and insured with the Appellant Insurance Company.

(ii) The dependants of the deceased are the respondent Nos.1 to 5 in this appeal and they preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.976 of 2006 seeking a compensation of Rs.10,00,000/- against the Appellant, sixth and seventh respondents for the death of Abdul Kalam.

(iii) The Motor Accident claims Tribunal by its Award dated 22.08.2007 in M.C.O.P.No.976 of 2006 directed the Appellant to pay the respondent Nos.1 to 5, a sum of Rs.2,47,000/- together with interest at the rate of 7.5%, per annum from the date of claim till the date of realisation. Under the Award dated 22.08.2007 passed in M.C.O.P.No.976 of 2006, the Tribunal has exonerated the liability of the seventh respondent/transport corporation.

(iv) Aggrieved by the Award dated 22.08.2007 passed in M.C.O.P.No.976 of 2006, the Appellant who is the insurer of the van bearing registration No.TN-25-X-9786 has filed the instant appeal disputing the liability fastened on it by the Tribunal.

3.Heard, Mr.K.Padmanabhan, learned Counsel for the Appellant, Mr.F.Terry Chella Raj, learned Counsel for the respondent Nos.1 to 4 and Mr.S.Saravanan, learned Counsel for the seventh respondent/transport corporation.

4.According to the learned Counsel for the Appellant, the Tribunal was not justified in holding that the deceased was travelling as a coolie in the goods van (TATA-407) bearing Registration No.TN-25-X-9786 belonging to the sixth respondent mainly on the oral evidence of PW2 and he also relied upon the counter statement filed by the sixth respondent.

5.According to the learned Counsel for the Appellant, no additional premium has been paid by the sixth respondent under the policy to cover a coolie in the insured vehicle. He drew the attention of this Court to the insurance policy which was marked as Ex.R.2 before the Tribunal and submitted that the employees referred to in the policy only referred to the driver and cleaner of that vehicle and not to a coolie. According to

him, the burden of proof is cast upon the respondent Nos.1 to 5 to establish that the deceased was a coolie travelling in the insured vehicle as an employee under the sixth respondent.

6. According to him, no evidence was placed by the respondent Nos.1 to 5 before the Tribunal excepting for the counter statement filed by the sixth respondent to prove that the deceased was a coolie.

7. Per contra, learned Counsel for the respondent Nos.1 to 5 drew the attention of this Court to the findings of the Tribunal under the impugned Award wherein, there is a categorical finding given by the Tribunal based on the findings available on record that the subject insurance policy is a comprehensive policy and the deceased was a coolie travelling in the insured vehicle along with the goods. He also referred to the findings of the Tribunal, wherein RW1, the official of the Appellant who was examined as a witness has admitted that he does not know the nature of the insurance policy and its coverage. He also drew the attention of this Court to the counter statement filed by the sixth respondent, the owner of the vehicle, wherein he has stated that the deceased was a coolie travelling in the insured vehicle and was his employee.

8. This Court after having considered the materials available on record and after examining the impugned Award and after hearing the submissions of the respective Counsels observes the following:

(a) This Court has perused the subject insurance policy which is marked as Ex.R2 before the Tribunal. As seen from the policy, it gives coverage for two employees. It does not say specifically as to what kind of employees the coverage was given. Admittedly, the subject vehicle is a goods vehicle entitled to carry six persons. In the instant case, only three persons travelled viz., one driver and two others including the deceased. The Tribunal has considered all these factors in a proper perspective and only thereafter it has given its finding that the respondent Nos.1 to 5 are entitled to be compensated by the Appellant under the subject insurance policy.

(b) It has been the consistent stand of the respondent Nos.1 to 5 before the Tribunal that the deceased was a coolie. The owner of the vehicle who is the sixth respondent in this appeal has also filed the counter statement confirming that the deceased was a coolie employed by him who was travelling in the insured vehicle at the time of the accident. Even though the sixth respondent did not let in any oral evidence before the Tribunal, no contra evidence has been produced by the Appellant to disprove the claim of the respondent Nos.1 to 5 that the deceased was a coolie. RW1-official of the Appellant has also

pleaded ignorance about the details of the insurance policy under which the subject vehicle was insured by the Appellant.

9. In the light of the above observations, this Court is of the considered view, that there is no legal infirmity in the findings of the Tribunal under the impugned Award. In the result, there is no merit in the instant appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No Costs.

10. It is represented that the entire Award amount has already been deposited to the credit of M.C.O.P.No.976 of 2006 before the Tribunal. The respondent Nos.1 to 5, is permitted to withdraw the same by filing an appropriate application as per the ratio apportioned by the Tribunal. The share of the minor claimant shall be deposited in any of the Nationalised Bank till she attains majority and the first respondent/natural guardian is permitted to withdraw the interest accrued on the amount of the share of the minor once in six months.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

arb/msr
To

1.The Motor Accident Claims Tribunal,
(District Judge)
Tiruvannamalai District.

2.The Section Officer,
Vernacular Section,
Madras High Court. (+2 Copies)

+1cc to M/S.M.Malar, Advocate Sr.67307
+1cc to M/S.S.Sairaman, Advocate Sr.67163

C.M.A.No.441 of 2008

sj[col]
srg 13/11/2018