

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.09.2018
CORAM
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1822 of 2008

1.Karuppal W/o.Late Duraisamy
2.Karthikeyan
3.Poongodi @ Mohanasundari
4.Karuppal W/o.Kittan
5.Kittan

.. Appellants/Petitioners

..Vs..

1.C.T.Dhanasekar
2.M.Velmurugan
3.The Branch Manager,
National Insurance Co-Ltd.,
Gobichettipalayam,
Erode District.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 31.01.2007 made in M.C.O.P.No.282 of 2005 on the file of the Motor Accident Claims Tribunal/ Principal District Court, Erode.

For Appellants : Mr.N.Manokaran
For Respondents 1 & 2 : No Appearance
For Respondent 3 : Mr.J.Chandran

J U D G M E N T

The instant appeal has been filed by the claimant challenging the Award dated 31.01.2007 passed by the Motor Accident Claims Tribunal (Principal District Court, Erode) in M.C.O.P. No.282 of 2005. Under the impugned Award, the third respondent/insurance company has been exonerated of its liability. The appellants have questioned the exoneration of liability of the third respondent insurance company in this instant appeal.

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

(i) One Duraisamy died on 17.06.2003, as a result of an accident caused by Tempo van bearing Registration No.TN-74-C-2163 owned by the second respondent and insured with the third respondent insurance company. The dependents of the deceased preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P. No.282 of 2005 seeking a compensation of Rs.5,00,000/-

for the death of Duraisamy as a result of the accident caused by the Tempo van owned by the second respondent and insured with the third respondent.

(ii) The Motor Accident Claims Tribunal, by its award dated 31.01.2007 in MCOP No.282 of 2005 directed the first and second respondent viz., the driver and owner of the vehicle to pay the appellants a sum of Rs.2,85,000/- together with interest at 7.5% per annum from the date of claim till date of realisation.

(iii) Under the impugned award dated 31.01.2007 in M.C.O.P. No.282 of 2005, the Tribunal has exonerated the liability of the third respondent/insurance company.

(iv) The case of the appellants before the Tribunal was that the deceased Duraisamy was a cleaner employed by the second respondent for the Tempo van which met with an accident resulting in the death of Duraisamy. The Tribunal has rejected the said contention and exonerated the insurance company from its liability on account of the policy violations committed by the second respondent who has allowed the deceased to accompany the driver in the van as a gratuitous passenger.

(v) Aggrieved by the finding of the Tribunal exonerating the insurance company's liability, the instant appeal has been filed by the appellants/ claimants.

3. Heard Mr.N.Manokaran, learned counsel for the appellant and Mr.J.Chandran, learned counsel for the 3rd respondent.

4. Despite service of the notice on the first and second respondents and their names having been printed in the cause list today, none appears on their side. Even before the Tribunal, they remained ex-parte.

5. According to the learned counsel for the appellants, the Tribunal ought not have exonerated the liability of the third respondent/insurance company even if there is a policy violation committed by the second respondent. Further, he would contend that the deceased Duraisamy was traveling in the Tempo van only as a cleaner and as a cleaner, the third respondent is liable to compensate the appellants/claimants since, there is a valid insurance policy at the time of the accident.

6. The learned counsel for the appellants drew the attention of this Court to the findings of the Tribunal exonerating the third respondent/insurance company from compensating the appellants/ claimants.

7. According to him, the third respondent/ insurance company did not examine any witness on their side, nor did they file any document to prove that the deceased Duraisamy was a gratuitous passenger. According to him, without any basis, the

Tribunal has come to an erroneous finding that the deceased Duraisamy was a gratuitous passenger and not a cleaner of the vehicle which was involved in the accident. Further, he contended that it was always the consistent stand of the appellants/claimants that the deceased Duraisamy was a cleaner employed by the second respondent.

8. Per contra, the learned counsel for the third respondent insurance company would submit that the appellants/claimants did not file any documents before the Tribunal to prove that the deceased Duraisamy was a cleaner employed by the second respondent. Further, he would contend that no evidence was let in by the appellants/claimants to prove that the deceased Duraisamy was traveling in the cabin of the goods vehicle which was involved in the accident.

9. This Court, after considering the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:

a) It is an undisputed fact that the deceased Duraisamy died as a result of an accident caused by the Tempo van owned by the second respondent and insured with the third respondent.

b) It is also an undisputed fact that the second respondent was having a valid certificate of insurance with the third respondent/ insurance company at the time of the accident.

c) It has been the consistent stand of the appellants before the Tribunal that the deceased Duraisamy was traveling in the goods vehicle involved in the accident as a cleaner and he was employed by the second respondent who was the owner of the vehicle.

d) No evidence has been let in by the third respondent/insurance company to disprove the claim of the appellants/claimants that the deceased Duraisamy was a cleaner employed by the second respondent and was traveling in the goods vehicle as a cleaner at the time of the accident. Without any basis, the Tribunal has erroneously accepted the statement made by the third respondent in its counter statement that the deceased Duraisamy was a gratuitous passenger and not a cleaner and has erroneously come to the conclusion that the third respondent/ insurance company is not liable to compensate the claim of the appellants/claimants in view of the policy violations committed by the second respondent/ the owner of the vehicle.

e) The appellants/claimants have filed 8 documents which were marked as Ex.P1 to Ex.P8 before the Tribunal and they included the certified copy of FIR in C.C.No.155 of 2003,

certified copy of postmortem certificate, copy of the Legal Heirship Certificate of Duraisamy, Certified copy of observation report, certified copy of rough sketch, certified copy of Inspection Report of Motor Vehicles involved in the accident, certified copy of charge sheet and certified copy of Judgment in C.C.No.155 of 2003. They have also examined two witnesses herein PW1, the first appellant herein and PW2-Pattan, who is a co-traveller in the same goods vehicle. On the side of the third respondent, no documents were filed nor any witness was examined.

10. The Hon'ble Supreme Court, as well as this Court, in a catena of decisions have held that when there is a policy violation, the insurer will have to pay the claimant and recover the said amount from the insured. In the instant case, even though the Tribunal has under the impugned award, has given a finding that there is policy violation on the part of the second respondent/ the owner of the vehicle, the Tribunal has exonerated the third respondent/ insurance company from any liability.

11. In the considered view of this Court, the Tribunal ought to have directed the third respondent/ insurance company to pay the appellants/ claimants the sum awarded and permitted them to recover the said amount from the first and second respondents.

12. In the light of the above observations, the appeal is partly allowed by modifying the Award dated 31.01.2007 passed in M.C.O.P. No.282 of 2005 by the Motor Accident Claims Tribunal, Principal District Court, Erode by directing the third respondent/insurance company to pay the appellants/claimants the award amount of Rs.2,85,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and on such payment, permit the third respondent/ insurance company to recover the said amount from the first and second respondents. No costs.

13. The third respondent/insurance company is directed to deposit the aforesaid sum within a period of four weeks from the date of receipt of copy of this order before the Tribunal. On such deposit being made, the appellants/claimants are permitted to withdraw the same by filing an appropriate application.

Sd/--
Assistant Registrar(CS IV)

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Sub Assistant Registrar

gsi/msr

To

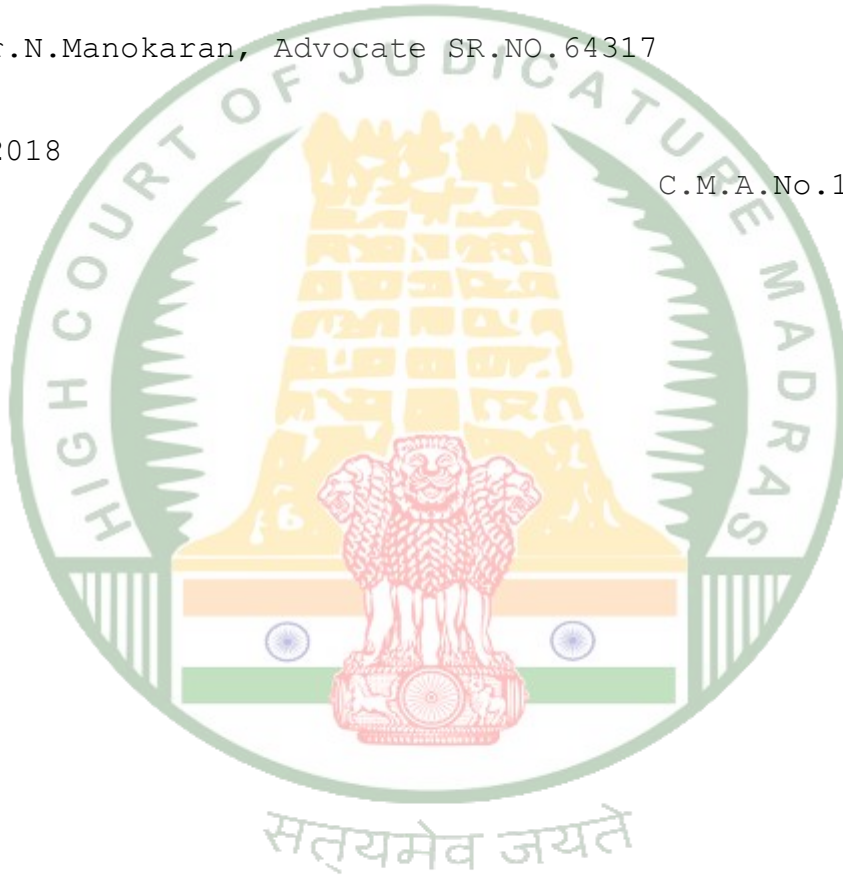
1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Erode.

2.The Record Clerk,
VR Section,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate SR.NO.64317

NRI (CO)
sm:31.10.2018

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