

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1117 of 2010
& M.P.No.1 of 2010

National Insurance Co. Ltd.,
No.78, Thiruvankadasamy Chetty Street,
Erode.

.. Petitioner

Vs.

1.P.Shankar @ Shankareswaran
2.K.Vijayakumar

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 25.06.2009 made in M.A.C.T.O.P.No.1452 of 2006 on the file of the Motor Accidents Claims Tribunal Fast Tract Court No.V, Coimbatore at Tiruppur.

For Petitioner : Mr.S.Vadivel

For R1 : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

For R2 : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 25.06.2009 made in M.A.C.T.O.P.No.1452 of 2006 on the file of the Motor Accidents Claims Tribunal Fast Tract Court No.V, Coimbatore at Tiruppur.

2.The petitioner is the second respondent, first respondent is the claimant, second respondent/ owner of the vehicle is the first respondent in M.A.C.T.O.P.No.1452 of 2006 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.V, Coimbatore at Tiruppur. According to the first respondent, on 04.05.206, at about 16.00 hours, he was travelling in a van bearing TN 40 Y 9649 along with milk. The driver of the van drove the vehicle in a rash and negligent manner and dashed against the tree in Annur to Avinashi road near Sathya mill and caused accident. The first respondent sustained grievous injury and he was taken to Balachandar Hospital, Avinashi and thereafter P.S.G. Hospital, Coimbatore and was admitted as an inpatient. The first respondent underwent treatment for three months and spent huge amount towards medical expenses. The first respondent was employed in M/s.Sri Sabari Milk Agencies, Cheyur Road, Avinashi as a Milk Seller and was earning Rs.4,500/- per month and due to the accident, he could not attend the work that he was doing earlier. The first respondent is the bread winner of the family. In the circumstances, he has filed the above M.A.C.T.O.P, claiming a sum of Rs.5,00,000/- as compensation.

3.The second respondent filed counter statement and denied all the averments of the first respondent and contended that it is for the first respondent to prove the manner in which accident occurred, the nature of injuries, age of the first respondent and contended that the first respondent travelled in the goods vehicle as gratuitous passenger and therefore, the petitioner is not liable to pay any compensation as claimed by the first respondent.

4.Before the Tribunal, the first respondent examined himself as P.W.1 and marked two documents as Exs.A1 and A2. On behalf of the petitioner, one Balasubramaniam, Administrative Officer of the petitioner was examined as R.W.1 and marked copy of the insurance policy of the van as Ex.B1. The first respondent as P.W.1 spoke how accident occurred and nature of the injuries sustained by him. The first respondent also deposed that he was travelling in the van as representative of the Arokyia milk to deliver the milk packets to the dealers.

5.The Tribunal, considering the evidence of P.W.1 and documents filed by the first respondent, held that the accident occurred only due to the rash and negligent driving by the driver of the van. The Tribunal also held that the first respondent travelled in

the van as a representative of the owner of the goods and he was not a gratuitous passenger and petitioner is liable to pay the compensation to the first respondent. Considering the nature of injuries, the Tribunal awarded a sum of Rs.8,140/- together with 7.5% interest.

6. Against the said order dated 25.06.2009 made in M.A.C.T.O.P.No.1452 of 2006, the petitioner has come out with the present Civil Revision Petition.

7. Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record. Though notice has been served on the second respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

8. According to the learned counsel for the petitioner, the Tribunal did not properly appreciate the evidence of first respondent as P.W.1 and erroneously held that first respondent is not a gratuitous passenger. Similarly, the Tribunal erred in holding that as per the policy, the petitioner is liable to pay compensation. The above contention of the learned counsel for the petitioner is without

merits. The first respondent let in evidence to prove that accident occurred only due to the rash and negligent driving by the driver of the van and also the first respondent travelled as a representative of the owner of goods and is not a gratuitous passenger. The petitioner has not let in any contra evidence to disprove the contention of the first respondent that he is not a gratuitous passenger. The learned Judge considering the failure on the part of the petitioner to substantiate his claim that first respondent is gratuitous passenger, held that petitioner is liable to pay compensation and directed the petitioner to pay a sum of Rs.8,140/- as compensation. There is no error in the reasoning of the Tribunal in awarding compensation.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.03.2018

Index :: Yes/No
gsa

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V.M.VELUMANI, J.

gsa

To

1.The National Insurance Co. Ltd.,
No.78, Thiruvankadasamy Chetty Street,
Erode.

2.The Judge,
Motor Accidents Claims Tribunal
Fast Tract Court No.V,
Coimbatore, Tiruppur.



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