

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.369 of 2012

P.Gunasekaran

...Appellant/Petitioner

vs.

1.Suseela

2.Divisional Manager,
United India Insurance Co. Ltd.,
Divisional Office, Ranipet.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.03.2010 made in MACT OP.No.238 of 2006 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Cheyyur.

For Appellant : Mr.A.V.Arun

For Respondents : R1 - served - No appearance
Mr.S.Arun Kumar for R2

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the claimant aggrieved by the dismissal of his claim by the Motor Accident Claims Tribunal (Subordinate Judge) at Cheyyur in MACT OP.No.238 of 2006.

2.Heard Mr.A.V.Arun, learned counsel for the Appellant and Mr.S.Arun Kumar, learned counsel for the second respondent.

3.The Tribunal has dismissed the claim on the ground that the Appellant/claimant was a gratuitous passenger in the insured vehicle at the time when the accident happened.

4.Before the Tribunal, the Appellant/claimant who is said to have sustained injuries as a result of an accident caused by the insured vehicle has filed 13 documents which were marked as Exs.P1 to P13 and two witnesses were examined on his side namely, the claimant himself as PW1 and the Doctor who examined

him as PW2. On the side of the second respondent Insurance Company, one document was filed and one witness was examined.

5. In the accident, 20 persons were travelling in the insured vehicle as seen from the FIR which was marked as Ex.P1. The said fact is also not disputed by the Appellant/claimant as seen from the evidence available on record. The only contention of the Appellant/claimant is that he was a cleaner duly authorized to travel in the vehicle and is not a gratuitous passenger.

6. The Appellant/claimant has neither examined his employer nor has he produced any documentary evidence to establish that he was a duly authorized cleaner. When 20 persons have travelled in the same insured vehicle, it is incumbent upon the Appellant/claimant to have produced some documentary evidence or at least he should have examined his employer to substantiate his contention that he was an authorized cleaner in the insured vehicle at the time of the accident. However, as seen from the evidence available on record neither any documentary evidence was produced before the Tribunal nor any witness examined to prove his case that he was a cleaner. The Tribunal has considered the evidence available on record and only thereafter has dismissed the claim since the Appellant/claimant has not discharged his initial burden to prove his case that he was an authorized cleaner in the insured vehicle and entitled for compensation.

7. The learned counsel for the Appellant had cited two decisions, one a Division Bench judgment of this Court dated 20.08.2018 passed in CMA No.1813 of 2016 in the case of Royal Sundaram Alliance Insurance Co. Ltd., vs. K. Latha and others and the other a Single bench judgment of this Court in the case of United India Insurance Co. Ltd., vs. Ayyamalai and others reported in 2012 (2) TN MAC 173.

8. This Court has perused and examined the said judgments and in the considered view of this Court, those judgments are not applicable to the facts of the instant case. Those judgments relate to non possession of driving license/permit, whereas the present case involves the claim made by a gratuitous passenger. It is settled law that a gratuitous passenger cannot claim compensation from the insured.

9. For the foregoing reasons, this Court is of the considered view that there is no merit in this appeal.

10. Accordingly, the appeal shall stand dismissed. The impugned Award has been passed against both the respondents. The first respondent, who is the owner of the vehicle is directed to deposit the entire amount awarded by the Tribunal,

after deducting the amount already deposited if any, together with interest at the rate of 7.5% from the date of the claim till the date of realization to the credit of MACT OP.No.238 of 2006 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Cheyyur, 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 appellant / claimant, through RTGS, within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pam

To
1.The Motor Accidents Claims Tribunal
(Subordinate Judge) at Cheyyur.

Copyt to
The Section Officer,
Vernacular Section,
Madras High Court.

+lcc to Mr.S.Arunkumar, Advocate, sr no.26082

C.M.A.No.369 of 2012

PP(CO)
RMP(11/01/2021)