

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1985 of 2014

Megatha

...Appellant/Petitioner

vs.

1.Sri Kanniamman PTC Ulaikkum Magalir Sangam,
Meenpidikkum Makkal Paguthi, N
Nochikuppam,
Marakkanam Post,
Tindivanam Taluk.

2.M/s.National Insurance Co. Ltd.,
Divisional Office,
Post Box No.157,
No.110 Jawaharlal Nehru Street, 2nd Floor,
Pondicherry - 605 001.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decretal Order dated 06.02.2014 passed in M.C.O.P.No.152 of 2007 on the file of the Motor Accidents Claims Tribunal (Sub Court) Madurantagam.

For Appellant : Mr.Sriram
for Mr.Kovi Ganesan

For Respondents : R1 - served - No
appearance

Mr.G.Udaya Sankar for R2

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JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the claimant challenging the finding of the Tribunal under the Judgment and Decree dated 06.02.2014 passed by the Motor Accident Claims Tribunal (Sub Court) Madurantagam in M.C.O.P.No.152 of 2007, that the second respondent Insurance Company is not liable to compensate the claimant since the Appellant/claimant was a gratuitous passenger in the insured vehicle.

2.Heard Mr.Sriram, learned counsel for the Appellant and Mr.G.Udaya Sankar, learned counsel for the second respondent.

3.As seen from the claim petition filed before the Motor Accident Claims Tribunal, on 10.11.2006 at about 9.00 hours, the Appellant/claimant along with other fishermen were travelling in a mini door van bearing Registration No.TN 32 V 9960 owned by the first respondent and insured with the second respondent. According to the Appellant/claimant, due to rash and negligent driving by the driver of the mini door van, the said van capsized and due to the same, the Appellant/claimant sustained injuries. The Tribunal under the impugned Award dismissed the claim petition as against the second respondent Insurance Company on the ground that the Appellant/claimant was a gratuitous passenger. The Appellant/claimant has filed this appeal seeking for enhancement of compensation as well as on the ground that the Tribunal ought to have granted pay and recovery rights as against the second respondent Insurance Company.

4.Before the Tribunal, the Appellant/claimant has filed 11 documents which were marked as Exs.A1 to A11 and two witnesses were examined on her side, the Appellant herself as PW1 and the Doctor who is alleged to have examined her as PW2. On the side of the respondents, two documents were filed namely, Ex.R1- Insurance Policy and Ex.R2. Even as per her own pleadings, as seen from the claim petition, the Appellant/claimant has pleaded that she was travelling in the insured vehicle along with other fishermen proceeded from Pondicherry to Kadapakkam on ECR Road near Anichankuppam. The Insurance Policy which was marked as Exs.R1 and R2 gives insurance coverage only for one person namely, driver of the insured vehicle. Therefore, it can be conclusively established that the Appellant/claimant is not entitled to be paid compensation as she was a gratuitous passenger even as per her own pleadings. The oral and documentary evidence available on record also conclusively establishes that the Appellant/claimant was a gratuitous

passenger.

5. In view of the settled position of law that in case of gratuitous passenger, the Insurance Company is not liable to compensate the claimant, the Tribunal has rightly rejected the claim as against the second respondent Insurance Company, who was the insurer for the mini door van bearing Registration No.TN 32 V 9960.

6. The Tribunal under the impugned Award has awarded a compensation of Rs.51,947/- as compensation which is payable by the first respondent and not by the second respondent. This Court has examined the quantum of compensation awarded by the Tribunal under various heads. This Court is of the view that there is no scope for interference even with regard to the quantum of compensation awarded by the Tribunal.

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

8. Accordingly, the appeal shall stand dismissed. The first respondent 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 M.C.O.P.No.152 of 2007 on the file of the Motor Accidents Claims Tribunal (Sub Court) Madurantagam, 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.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

pam

To

1. The Motor Accidents Claims Tribunal/Sub Judge,
Madurantagam.

2.Sri Kanniamman PTC Ulaikkum Magalir Sangam,
Meenpidikkum Makkal Paguthi, N
Nochikuppam,
Marakkanam Post,
Tindivanam Taluk.

3.The Section Officer,
Vernacular Section,
Madras High Court.

+1 cc to Mr.G.UdayaSankar Advocate sr26332

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