WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.627 of 2015 & 1903 of 2016 &
M.P.No.1 of 2015

In CMA.No.627 of 2015

The Divisional Manager,
M/s.United India Insurance Co. Ltd.,
No.46, Katpadi Salai,
Vellore District ...Appellant/2nd Respondent

..Vs..

1.Kaasi
2.Krishnan ...Respondents/Petitioner/1st Respondent

In CMA.No.1903 of 2016

Kasi ...Appellant/Petitioner

vs.

1.Krishnan
(set exparte before the Tribunal)

2.The Divisional Manager,
The United India Insurance Co. Ltd.,
No.46, Katpadi Salai,
Vellore. ...Respondents/Respondents

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in MCOP.No.160 of 2009 on 31.01.2012 on the file of the learned Motor Accident Claims Tribunal (Additional Subordinate - Judge) at Tiruvannamalai - District.

For Appellant in CMA.No.627 of 2015 &
R2 in CMA.No.1903 of 2016 : Mr.J.Chandran

For R1 in CMA.No.627 of 2015 &
Appellant in CMA.No.1903 of 2016 : Mr.F.Terry Chella Raja

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

COMMON JUDGMENT

CMA.No.627 of 2015 has been filed by the Insurance Company and CMA.No.1903 of 2016 has been filed by the claimant challenging the award dated 31.01.2012 passed by the Motor Accident Claims Tribunal (Additional Subordinate - Judge), Tiruvannamalai District in MCOP.No.160 of 2009.

2. Heard Mr.J.Chandran, learned counsel for the Insurance Company and Mr.F.Terry Chella Raja, learned counsel appearing for the claimant. Since the owner of the vehicle was set exparte before the Tribunal, notice to the owner of the vehicle is dispensed with by this Court.

3. The Tribunal under the impugned award has directed the Insurance Company to pay the claimant a sum of Rs.92,000/- as compensation together with interest and costs for the injuries sustained by him as a result of an accident caused by the insured vehicle. The details of the compensation awarded by the Tribunal are as follows:

Heads	Award Amount (Rs.)
Loss of income for the period of one month	3,000/-
Extra nutritious	3,000/-
Attender Charges	3,000/-
Transportation Charges	3,000/-
Pain and Suffering	10,000/-
Partial Permanent Disability	70,000/-
Total	92,000/-

4. The Insurance Company has challenged the impugned award questioning its liability since according to them, the claimant is an unauthorised passenger who travelled in the goods vehicle and not entitled for compensation. The case of the claimant as seen from the claim petition is that he was carrying goods belonging to the owner in the goods vehicle and entitled for compensation for the injuries sustained by him as a result of the accident caused by the insured vehicle. However, it is the contention of the Insurance Company before the Tribunal that the claimant is an authorised passenger as he along with other persons travelled in the insured vehicle as gratuitous passenger to attend a political meeting and hence, according to them, the claimant is not entitled for any compensation from the Insurance Company.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

5. Before the Tribunal, the claimant has filed six documents which were marked as Ex.P1 to Ex.P6 and two witnesses were examined on his side viz., the claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the Insurance Company, three documents were filed which were marked as Ex.B1 to Ex.B3 and one witness was examined namely their official as RW1.

6. As seen from the evidence available on record, it has been the consistent stand of the claimant that he was carrying the goods belonging to the owner, when the accident had happened which resulted in the injuries sustained by him. Even though the Insurance Company has disputed its liability on the ground that the claimant is an unauthorised passenger and not entitled for any compensation, no evidence has been placed on record before the Tribunal to establish their case that the claimant is a gratuitous passenger and an authorised passenger. Even though in their evidence through RW1, it has been deposed by him that other persons who travelled along with the claimant in this Appeal in the very same insured vehicle had also preferred claims against the Insurance Company which were dismissed for default, the number of the claim petitions have also not been disclosed.

7. The Tribunal has considered all these factors and only thereafter has come to the right conclusion that the Insurance Company is liable to compensate the claimant. Further the Tribunal has awarded a just compensation of Rs.92,000/-. The Insurance Company has also not challenged the quantum of compensation awarded to the claimant and has challenged only its liability.

8. The accident happened in the year 1999 and no useful purpose will be served if fresh enquiry is ordered by this Court relating to the said accident and based on preponderance of probabilities of the case, the Tribunal has rightly held the Insurance Company liable. Accordingly, this court is of the considered view that the appeal filed by the Insurance Company is liable to be dismissed.

9. Insofar as the appeal filed by the claimant is concerned, this Court is of the considered view that the compensation awarded by the Tribunal under the impugned award is a just compensation and therefore there is no scope for enhancement as prayed for by the claimant in CMA.No.1903 of 2016 which was filed one year after the appeal filed by the Insurance Company.

10. For the foregoing reasons, there is no merit in both the appeals filed by the Insurance Company as well as the claimant. Accordingly, both the Civil Miscellaneous Appeals are dismissed.

https://hcservices.ecourts.gov.in/hcservices/

The Appellant in CMA.No.627 of 2015 / second respondent in CMA.No.1903 of 2016, the Insurance company is directed to deposit the entire award amount along with interest and costs as assessed by the Tribunal after deducting the amount already deposited if any to the credit of MCOP.No.160 of 2009 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.160 of 2009 to the bank account of the claimant who is the Appellant in CMA.No.1903 of 2016 / first respondent in CMA.No.627 of 2015 through RTGS within a period of one week thereafter. No costs. Consequently, connected miscellaneous petition is closed.

11. It is made clear that since according to the Insurance Company, the claim petitions filed by other persons travelling in the same vehicle in which the claimant was also travelling have been dismissed for default, they do not have any right to seek compensation from the Insurance Company.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nl

To

1.The Additional Subordinate - Judge,
Tiruvannamalai - District.

Copy to:

The Section Officer
V.R.Section, High Court of Madras.

+1cc to M/s.M.Malar, Advocate Sr No.24244
+1cc to Mr.J.Chandran, Advocate Sr No.24768

C.M.A.Nos.627 of 2015 & 1903 of 2016

KK (CO)
PR (29/10/2021)

WEB COPY