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C.M.A.No.672 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.672 of 2022
and C.M.P.No.4784 of 2022

United India Insurance Company Limited,
Shiva Medical 'B' upstairs,
Calicut Road, Gudalur,
The Nilgris District – 643 212.

... Appellant

Versus

1.A.Ramasamy
2.T.Dinesh
3.T.Thanajayam

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 04.01.2021 passed in M.C.O.P.No.231 of 2019, on the file of the Motor Accident Claims Tribunal, III Additional District Court, Special Subordinate Court, Erode.

For Appellant	: Mr.J.Chandran
For Respondents	: No Appearance



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JUDGMENT

This appeal has been filed by the appellant/Insurance Company challenging the compensation awarded by the Tribunal in M.C.O.P.No.231 of 2019, dated 04.01.2021.

2.The claim petition was filed stating that on 12.09.2018 at about 2.00 a.m., while the 1st respondent was travelling in lorry bearing Regn No.TN-59-A-9947 as the owner of the goods from Erumadu to Ooty, the driver of the said lorry drove the same in a rash and negligent manner , dashed against the side wall of the road; that due to the said accident, the 1st respondent sustained multiple grievous injuries and that thus, the 1st respondent was entitled for compensation.

3.The appellants 2 and 3/driver and owner of the lorry remained *ex-parte* before the Tribunal.

4.The appellant/Insurance Company filed a counter denying all the averments made in the claim petition and stated that since the vehicle from the opposite direction came in wrong side, the driver of the lorry in order to avoid the accident turned it to the left side, which hit on the wall;



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that the 1st respondent travelled as gratuitous passenger in the lorry and hence, the appellant was not liable to pay any compensation to the 1st respondent; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the 1st respondent examined two witnesses and marked Ex.P.1 to Ex.P.19 on his side. The appellant had not examined any witness or marked any document

6.The Tribunal after considering the oral and documentary evidence, directed the appellant to pay a sum of Rs.5,75,000/- as compensation to the 1st respondent.

7.Aggrieved over the award passed by the Tribunal, the appellant filed the present appeal challenging the findings of the Tribunal with respect to the negligence aspect.

8.The learned counsel for the appellant submitted that the 1st respondent was gratuitous passenger and the appellant is not liable to pay any compensation. The learned counsel for the appellant fairly conceded



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that as regards quantum of compensation, there is no infirmity in the award of the Tribunal.

9.Though notice was served on the respondents, none entered appearance on behalf of them.

10.The only question involved in the instant appeal is whether the 1st respondent herein was a gratuitous passenger and hence, he is not entitled to compensation?

11.On perusal of records, it is seen that the Tribunal had held that the 1st respondent was not an unauthorised passenger and travelled in lorry along with goods belonging to him. P.W.1 had deposed before the Tribunal stating the above facts. The appellant had not established before the Tribunal that the 1st respondent was a gratuitous passenger. In the absence of any evidence to substantiate their claim, this Court finds no infirmity in the finding of the Tribunal holding that the appellant is liable to pay compensation. Since there is no challenge with regard to quantum of compensation, the award of the Tribunal is confirmed.



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12. With the above observations, this Civil Miscellaneous Appeal

is dismissed and the compensation awarded by the Tribunal is confirmed together with interest at 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the 1st respondent is permitted to withdraw the entire award amount along with interest and costs, less the amount already withdrawn, if any. No costs. Consequently, connected miscellaneous petition is closed.

30.08.2023

rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1. The Motor Vehicle Accident Tribunal,
III Additional District Court,
Special Subordinate Court, Erode.

2. The Section Officer,
VR Section, High Court, Madras.



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SUNDER MOHAN, J.

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