



C.M.A.(MD)No.1094 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **28.08.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No. 1094 of 2013

National Insurance Company Limited,
Represented through its Branch Manager,
24, Kamarajar Bazaar, Bodinayakanur,
Madurai District ... Appellant/Respondent No.1

Vs.

1.John Britto @ John Peter ..1st Respondent/Petitioner
2.A.Bommi Naicker ...2nd Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.03.2009 passed in M.C.O.P.No.152 of 1994 on the file of the Motor Accident Claims Tribunal Judge (Additional District Court/Fast Track Court No.4), Periyakulam.

For Appellant	: Mr.J.S.Murali
For R1	: No appearance
R2	: Died

JUDGMENT

The appeal has been filed challenging the finding on negligence and the quantum of compensation awarded by the Tribunal.

2.The 1st respondent filed a claim petition stating that while he was working as a loadman and travelling in the tractor belonging to the 2nd



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respondent herein, the driver of the tractor drove it in a rash and negligent manner, as a result of which, the 1st respondent fell down from the Tractor and the wheel of the tractor ran over the 1st respondent, which caused grievous injuries on him.

3. The appellant filed a counter stating that the claimant was a gratuitous passenger and therefore not liable to indemnify the insurer and that in any case, the compensation claimed was excessive.

4. The 1st respondent examined himself as P.W.1 and the doctor as P.W.2 and marked Ex.P.1 to Ex.P.4. The appellant examined R.W.1 and marked the copy of the policy as Ex.R.1.

5. The Tribunal, after taking into consideration the oral and documentary evidence, held that as per the terms of the policy, one person was allowed to travel in the tractor besides the driver and therefore, he is not a gratuitous passenger, and awarded Rs.42,250/-

6. Though notice has been served on the 1st respondent, none entered appearance. The 2nd respondent is stated to be no more. However,



in view of the order that this Court proposes to pass, imploding the legal heirs of the 2nd respondent may not be required.

7. The points for consideration are as follows:

a) Whether the finding on negligence by the Tribunal is justified;
and

b) Whether the quantum of compensation awarded by the Tribunal is just and reasonable.

8. The claimants had examined P.W.1 to prove the manner of the accident. The terms of contract to the insurance marked as Ex.R.1 suggest that one passenger can travel in the tractor. The appellant had not let in any evidence to show that besides the claimant there was other persons were travelling in the tractor. In such circumstances, the respondent cannot be said to be a gratuitous passenger in the tractor. Therefore, the finding on liability is justified and hence confirmed.

9. As regards the quantum of compensation, it is seen that the 1st respondent established that he had suffered disability at 31% and had marked disability certificate issued by the doctor as Ex.P.4. The Tribunal



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awarded Rs.1,000/- for each percentage of disability, which is justified, considering the year of accident. The compensation under the other heads, namely, transport expenses and extra nourishment and pain and suffering is also reasonable. Therefore, the award of the Tribunal is just and reasonable and no interference is called for.

10. In fine, this appeal is dismissed. No costs.

28.08.2024

Index : Yes / No
Neutral Citation : Yes / No
CM

To

1. Motor Accident Claims Tribunal Judge (Additional District Court/Fast Track Court No.4), Periyakulam.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No. 1094 of 2013

28.08.2024