



C.M.A(MD)No.1087 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated: 12.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A(MD)No.1087 of 2014

and

M.P(MD)No.1 of 2014

The National Insurance Company Limited,
No.6, North Veli Street,
Madurai Town,
Represented by its Divisional Manager. ... Appellant/2nd Respondent

Vs.

1.A.Santhanam ... 1st Respondent/Petitioner

2.D.Palaniraj ... 2nd Respondent/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Sivagangai in M.C.O.P.No.8 of 2009, dated 07.12.2010.

For Appellant : Mr.D.Sivaraman

For Respondents : No appearance



C.M.A(MD)No.1087 of 2014

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed by the Tribunal in M.C.O.P.No.8 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Sivagangai, wherein, the first respondent herein has filed a claim petition for claiming compensation of Rs.2,00,000/- for the injury sustained by him in a road accident.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3. According to the petition filed by the first respondent / petitioner, he travelled in the second respondent / first respondent vehicle bearing Registration No.TN 69 Z 5443 on 02.09.2008 as load man along with two others. At the time, the driver of the second respondent / first respondent vehicle had driven in a rash and negligent manner and dashed against the Tree and thereby, the petitioner along with others have sustained injuries. The petitioner sustained fracture injury and he permanently disabled. His



C.M.A(MD)No.1087 of 2014

disability is 28%. Thereby, he claimed a sum of Rs.2,00,000/-.

WEB COPY

4. According to the appellant / second respondent, the first respondent / petitioner was travelled as gratuitous passenger not as load man and in the complaint given by one of the co-passenger, the name of the petitioner has not been mentioned and further the petitioner admitted in the Hospital after two days from the date of accident. Therefore, the injury sustained by the petitioner is not due to the accident as alleged by the petitioner. Hence, the petition is liable to be dismissed.

5. Before the Tribunal, in order to prove the case of the petitioner, in main petition, the petitioner examined himself as P.W.1 and Doctor was examined as P.W.2 and also marked Exhibits P.1 to P.5 and on the side of the respondents, R.W.1 was examined and marked Exhibit R.1.

6. After analyzing the evidences adduced on either side, the Tribunal has rendered findings that the claimant had travelled as gratuitous passenger and thereby, awarded a sum of Rs.66,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization



C.M.A(MD)No.1087 of 2014

WEB COPY

and directed the second respondent to pay the amount with interest and recover the same from the owner of the vehicle (i.e.,) first respondent.

Aggrieved by the above said order passed by the Tribunal, the present Civil Miscellaneous Appeal has been preferred by the second respondent / Insurance Company on the ground of liability.

7. The learned Counsel appearing for the appellant would contend that as per the findings of the Tribunal, the claimant travelled as gratuitous passenger. Once he travelled as gratuitous passenger, pay and recovery cannot be ordered. Therefore, the order passed by the Tribunal is liable to be set aside. Further, he argued that the claimant was not travelled in the second respondent / first respondent vehicle on the date of accident. In the FIR also the name of the first respondent / petitioner was not mentioned and the first respondent / petitioner also not admitted the Hospital immediately and there are four days delay. Thereby, the petitioner did not sustain injury in the present accident as alleged by him. The above said aspects have not been considered by the Tribunal. Therefore, the order passed by the Tribunal is liable to be set aside.



C.M.A(MD)No.1087 of 2014

WEB COPY

8. There is no representation on the side of the respondents.

9. This Court has heard the appellant / second respondent and perused the materials available on record.

10. It is admitted fact that the first respondent vehicle involved in the accident. According to the appellant / second respondent, the first respondent / petitioner did not sustain injuries due to the accident and in the FIR, the name of the first respondent / petitioner also not mentioned and the first respondent / petitioner also not admitted in the Hospital immediately and there is a delay of four days. Therefore, the first respondent / petitioner did not sustain injury due to the accident. According to the first respondent / petitioner, he sustained injury due to the accident that the accident took place due to the negligence on the part of the driver of the first respondent / petitioner. In this context, on the side of the petitioner, he examined himself as P.W.1 and marked Exhibits P.1 to P.5. On careful perusal of evidence of P.W.1, it reveals that the accident took place due to the negligence on the part of the first respondent / petitioner and he also sustained injury due to the accident. The Tribunal



C.M.A(MD)No.1087 of 2014

WEB COPY

also in this context after analyzing the evidences held that the deceased was travelled as gratuitous passenger. The first respondent / petitioner in his evidence categorically stated that he travelled as load man and there is no any contra evidence adduced by the appellant / second respondent to prove that the petitioner / first respondent was travelled as gratuitous passenger. In the absence of contra evidence, the evidence of petitioner is reliable and acceptable and according to the evidence, he was travelled as load man in the first respondent vehicle. Only because of non-mentioning the name of the petitioner by one of the co-passenger of the vehicle in the complaint, it cannot be say that the petitioner was not travelled in the vehicle on the date of accident.

11. The another contention by the learned Counsel appearing for the appellant / second respondent is that the petitioner / first respondent immediately did not go to the Hospital and there is a delay of four days. In the petition, the petitioner pleaded that he is admitted in Manamadurai Hospital and he was in-patient from 02.09.2008 to 04.09.2008. Thereafter, he was shifted to Headquarters of the Government Hospital at Manamadurai from 05.09.2008 to 13.09.2008. But the first respondent /



C.M.A(MD)No.1087 of 2014

petitioner has not produced the documents to show that he was admitted in the Manamadurai Hospital on 02.09.2008 to 04.09.2008. However in the petition itself, he pleaded and also stated in his evidence that he was admitted in the Manamadurai Government Hospital. Thereby, in the absence of contra evidence, the evidence of P.W.1 is acceptable. Therefore, the finding of the Tribunal that the first respondent / petitioner travelled as gratuitous passenger is not acceptable. In view of the above said discussion, the order passed by the Tribunal in respect of the finding that the petitioner / first respondent travelled as gratuitous passenger is liable to be set aside and accordingly, set aside. There is no dispute in respect of the quantum of the amount. The first respondent / petitioner also not disputed the quantum and has not filed any separate appeal or cross objection as against the quantum of the amount awarded by the Tribunal. In view of the above said discussions, this Court is of the opinion that this Civil Miscellaneous Appeal is liable to be allowed in part.

12. In the result, this Civil Miscellaneous Appeal stands partly allowed and the order passed by the Tribunal in M.C.O.P.No.8 of 2009, dated 07.12.2010 on the file of the Motor Accident Claims Tribunal, Chief



C.M.A(MD)No.1087 of 2014

WEB COPY

Judicial Magistrate, Sivagangai is modified to the effect that the second respondent is directed to pay the award amount with interest as awarded by the Tribunal within two months from the date of the judgment of this Court. On being the deposit made by the appellant / second respondent, the petitioner is at liberty to withdraw the same by filing appropriate application. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

12.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Sivagangai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.1087 of 2014

P. DHANABAL, J.

BTR

C.M.A(MD)No.1087 of 2014

12.02.2024