

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.62 of 2011

the National Insurance Company Ltd,  
74-A, Paramathi Road,  
Namakkal Town. ...Appellant  
Vs  
1.P.Shanmugam  
2.N.Sasikumar ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award passed by the Motor Accident Claims Tribunal, (Fast Track Court), Namakkal in M.C.O.P.No.603 of 2005 dated 27.10.2009.

For Appellant : Mrs.R.Sreevidhya

For Respondents : Mr. M. Anirudhan  
R2 Ex parte

## JUDGMENT

The instant appeal has been filed by the insurance company challenging the award dated 27.10.2009 passed by the Motor Accident Claims Tribunal, (Fast Track Court) at Namakkal in M.C.O.P. No. 603 of 2005.

2.The brief facts leading to the filing of the instant appeal are as follows:

- (i) The first respondent sustained injuries on 16.05.2005, as a result of an accident, while he was traveling in a 407 tempo van bearing registration No. TN-28-E 9966 along with the goods. Due to the rash and negligent driving by the driver of the said vehicle, the vehicle got capsized resulting in injuries sustained by the first respondent.
- (ii) The 1st respondent preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.603 of 2005 seeking a compensation of Rs.2,00,000/-. The Motor Accident Claims Tribunal by its award dated 27.10.2009 in M.C.O.P.No. 603 of 2005 directed the appellant to pay the 1st respondent a sum of Rs. 1,00,700/- together with interest at the rate of 7.5%, per annum from the date of claim till the date of realisation.
- (iii) Aggrieved by the award dated 27.10.2009 passed in M.C.O.P No. 603 of 2005, the instant appeal has been filed.

3. Heard, Mrs.R.Sreevidhya, learned Counsel for the Appellant and Mr.M. Anirudhan, learned Counsel for the 1st respondent. The 2nd respondent has remained ex-parte, both before the Tribunal as well as this Court.

4. According to the learned counsel for the appellant, the 1st respondent was a gratuitous passenger in the insured vehicle and therefore, the appellant is not liable to pay any compensation to him for the injuries sustained by him. Learned counsel for the appellant drew the attention of this Court to the First Information Report which was marked as Ex.A1 and submitted that the insured vehicle at the time of the accident was carrying 8 passengers which is beyond its capacity. According to her, the insurance policy gives insurance coverage only for four persons.

5. Learned Counsel for the appellant further contended that the quantum of compensation awarded by the tribunal under the impugned award is also excessive. According to her, the tribunal has erroneously applied the multiplier method in awarding the compensation to the first respondent.

6. According to her, even though the tribunal has assessed the disability of the 1st respondent at 10 %, the tribunal has erroneously adopted the multiplier method.

7. This court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels, observes the following:

(a) In his claim petition, the 1st respondent has stated that he was accompanying the goods in the insured vehicle at the time of the accident. He has also disclosed that he was earning a monthly income of Rs.5,000/- at the time of the accident. The insurance policy was also not marked as an exhibit before the tribunal as seen from the award. The 1st respondent has sustained multiple grievous injuries all over his body including fracture in his jaw and forehead.

(b) Considering his age, avocation and the nature of injuries sustained by the first respondent, the tribunal has rightly applied the multiplier method in assessing the compensation payable to the 1st respondent. Even though, the appellant before the tribunal have raised the contention that the 1st respondent was only a gratuitous passenger and the insured vehicle at the time of the accident was carrying persons beyond its capacity, no documentary evidence has been produced by the appellant before the tribunal to establish that the 1st respondent was a gratuitous passenger in the insured vehicle at the time of the accident and the insured vehicle was also carrying persons beyond its capacity of four.

(c) The 1st respondent has filed ten documents before the tribunal which were marked as Exs.A1 to A.10 which included the FIR, Accident Report, Motor Vehicles Inspection Report, Charge sheet, Discharge Summary from the hospital, medical bills, disability certificate and X-Ray. The 1st respondent has also examined himself as a witness. On the side of the appellant, no documents were filed. The tribunal under the impugned award has considered the oral and documentary evidence and only thereafter has passed the impugned award and this Court does not find any legal infirmity in the same.

8. In the result, there is no merit in the instant appeal. Accordingly, the appeal is dismissed. No costs. Consequently, the connected M.P.No.1 of 2011 is closed.

9. It is represented that the amount awarded by the tribunal has already been deposited before the tribunal. The first respondent is permitted to withdraw the same by filing an appropriate application.

12.10.2018

Internet: Yes/No

Index: Yes/No

Speaking order/Non-speaking order

msr/sbn

To

1. The Motor Accident Claims Tribunal,  
(Fast Track Court), Namakkal

2. The Record Clerk,  
Vernacular Section,  
High Court, Madras.

ABDUL QUDDHOSE, J.

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