

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(NPD)No.1111 of 2010  
& M.P.No.1 of 2010

New India Assurance Company Ltd.  
 20, government College road,  
 Coimbatore District

.. Petitioner

Vs.

1. P.Janaki
2. P.Semalai
3. P.Kumarasamy
4. United India Insurance Co. Ltd.,  
 Branch Office, No.5, Periakadai Veedhi  
 Dharapuram Post, Erode District.
5. C.Shanmumuram,
6. R.Gomathi

.. Respondents

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India, against the fair and decretal order dated 17.03.2008, made in M.A.C.T.O.P.No.242 of 2006, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Dharapuram.

For Petitioner

: Mr. C.Ramesh Babu

For RR1 to 3  
 For R4

: No appearance  
 : M/s.R.Sreevidhya

For R5

: Dismissed for default vide Order  
 dated 19.10.2012

For R6

: Mr.N.Manokaran

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 17.03.2008, made in M.A.C.T.O.P.No.242 of 2006, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Dharapuram.

2. The petitioner insurance company is sixth respondent. The first respondent is the claimant, respondents 2 to 6 are the respondents 1 to 5 in M.C.O.P.No.242 of 2006. The first respondent filed the said claim petition, claiming a sum of Rs.50,000/- as compensation for the injuries sustained by her in the accident that occurred on 16.04.2005 at 8.30 a.m. According to the first respondent, on the day of accident, she was travelling along with others in mini auto, bearing Registration No.TN-55-E-6646, belonging to the sixth respondent herein. The driver of the mini auto was driving the vehicle slowly and carefully. While so, a mini bus, bearing Registration No. TN-28-T-7486, belonging to third respondent, insured with fourth respondent, was driven by second respondent in a rash and negligent manner and dashed against the mini auto and caused accident. The petitioner and others sustained

multiple injuries. Therefore, she claimed compensation from petitioner and all the respondent. The respondents 2, 3 and 5 remained exparte.

3. The sixth respondent filed counter and submitted that the accident did not occur due to rash and negligent driving by the driver of the mini auto. He was driving the vehicle slowly and cautiously. The accident occurred only due to rash and negligent driving by the driver of the mini bus, the second respondent herein. The fourth respondent herein, insurance company of mini bus filed counter and submitted that accident occurred due to rash and negligent driving by driver of both the vehicles. The petitioner filed counter and submitted that accident occurred only due to rash and negligent driving by driver of mini bus. The first respondent and others travelled in violation of policy condition in a goods carriage. Therefore, the petitioner is not liable to pay any compensation.

4. Before, the Tribunal, the first respondent and others were examined as PW1 to PW4 and marked 21 documents as Ex.P1 to P21. The sixth respondent has examined herself as RW1 and one Seetharaman was examined as RW2.

5. The Tribunal, considering the pleadings, oral and documentary evidence, came to the conclusion that accident occurred due to drivers of both the vehicles and considering the nature of injuries, awarded a sum of Rs.10,000/- as compensation and directed the petitioner and fourth respondent, each to pay 50% (Rs.5,000/-) of the compensation amount to the respondent. The learned counsel appearing for the fourth respondent submitted that already he had deposited the amount of Rs.5,000/-.

6. Against the said award dated 17.03.2008, made in M.A.C.T.O.P.No.242 of 2006, the petitioner has come out with the present civil revision petition.

7. Heard the learned counsel appearing for petitioner and respondents and perused the materials on record.

8. The contention of the learned counsel for the petitioner that Tribunal erred in holding that both the drivers are responsible for accident, is without merits. The Tribunal has considered, the sketch Ex.P3 and found that accident took place in the middle of the road,

mini bus standing in the middle of the road and mini auto lying on the side of the road. On considering the sketch, Tribunal concluded that accident took place only due to both the vehicles. This conclusion arrived at by the Tribunal, was based on the facts. The first respondent and others travelled in goods carriage in violation of the policy condition and therefore, the petitioner is not liable to pay any compensation.

9. A Division Bench of this Court in a judgment reported in **"2012 (1) TN MAC 89 (DB) (Royal Sundaram Alliance General Insurance Co. Ltd., Vs. P.Ayyakannu)"** has held that gratuitous passengers travelling in a goods carriage are not entitled to claim compensation from Insurance Company. In view of well settled judicial pronouncement, petitioner is not liable to pay compensation. As far as the quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.10,000/-, which is just and reasonable compensation and the same is hereby confirmed. The Motor Vehicle Act is a beneficial legislation in favour of the victims. The victims should not be denied their rightful compensation, in view of technicalities. I hold that in the interest of justice and equity, this is not a fit case to set aside the award of the Tribunal.

**V.M.VELUMANI, J.**

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10. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.07.2017

Index : Yes/No

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To

1. The Subordinate Judge, Dharapuram
2. The New India Assurance Company Ltd.  
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