

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.1095 to 1098 of 2008
and M.P.Nos.1,1,1,1 of 2008

The New India Assurance Co.Ltd.
Represented by its Branch Manager
No.149, Bharathiyar road
Karaikal.

.. Petitioner in all
the CRPs.

Vs.

1.Punitha

.. 1st Respondent in
C.R.P.No.1095 of 2008

1.Dhanalakshmi

.. 1st Respondent in
C.R.P.No.1096 of 2008

1.Annapoorani

.. 1st Respondent in
C.R.P.No.1097 of 2008

1.Anjalai

.. 1st Respondent in
C.R.P.No.1098 of 2008

2.P.Selvam

.. 2nd Respondent
in all the CRPs.

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PRAYER: Civil Revision Petitions filed under Article 227 of the
Constitution of India, against the judgment and decree dated
30.06.2004 made in M.C.O.P.Nos.620 to 623 of 2003 on the file of

the Motor Accident Claims Tribunal, District Court, Nagapattinam.

For Petitioner : Mrs.R.Sreevidhya

In C.R.P.Nos.1096 to 1098 of 2008

For R1 : Mr.M.Thamizhavel

In C.R.P.No.1095 of 2008

R1 : Died

In all C.R.Ps.

For R2 : Batta due

COMMON ORDER

The Civil Revision Petitions are filed against the judgment and decree dated 30.06.2004 made in M.C.O.P.Nos.620 to 623 of 2003 on the file of the Motor Accident Claims Tribunal, District Court, Nagapattinam.

2. Issues in all the civil revision petitions are one and the same and hence, they are disposed of by this common order.

3. The petitioner/Insurance company is the second respondent, first respondents in all the civil revision petitions are

the claimants and second respondent is the first respondent in M.C.O.P.Nos.620 to 623 of 2003. According to the first respondents/claimants, on 30.06.2003, they purchased fish and loaded the same in a load auto bearing Registration No.PY-02A-8019. The claimant in M.C.O.P.No.622 of 2003/first respondent in C.R.P.No.1097 of 2008 was travelling in the auto sitting next to the driver. All other claimants went by bus and they were waiting for the arrival of the load auto near Poongavur Kurumkulam channel. When the auto reached that place, due to rash and negligent driving by the auto driver, the auto over turned and dashed against all the claimants and one Nagammal, who were standing there. The said Nagammal died due to the injuries sustained by her in the accident and other claimants were sustained injuries. The accident occurred only due to rash and negligent driving by the driver of the auto belonging to the second respondent and insured with the petitioner. Therefore, the claimants have filed M.C.O.P.Nos.620, 621 and 623 of 2003 claiming a sum of Rs.40,000/- each and filed M.C.O.P.No.622 of 2003 claiming a sum of Rs.50,000/- as compensation.

4. The second respondent/owner of the vehicle filed separate

counters in all the M.C.O.Ps. and submitted that the driver of the auto is an experienced driver and the accident was not occurred due to his driving. At that time, a group of women were standing on the middle of the road, on seeing the auto, they got frightened and invited the accident.

5. The petitioner filed separate counters in all the M.C.O.Ps. and submitted that all the claimants and the deceased person were travelled in the auto contrary to the policy condition. The second respondent did not inform the accident to the petitioner. In the F.I.R., it is stated that all the claimants and the deceased were travelling in the load auto and they are unauthorised passengers. The driver of the auto was not holding valid driving license at the time of accident. Therefore, the petitioner is not liable to pay any compensation to the claimants.

6. Before the Tribunal, all the claimants examined eight witnesses as P.W.1 to P.W.8 and marked 13 documents as Exs.P1 to P13. The petitioner examined two witnesses and marked 8 documents as Exs.R1 to R8.

7. The learned Judge considering the pleadings, oral and

documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the auto. As per the charge sheet filed by the police after investigation, it has been stated that the claimants were standing on the road, load auto dashed against them and caused injuries. Considering the nature of the injuries, the Tribunal awarded a sum of Rs.8,250/- to each of the claimants.

8. Against the common award dated 30.06.2004 made in M.C.O.P.Nos.620 to 623 of 2003, the present civil revision petitions are filed by the petitioner/Insurance Company.

9. Heard the learned counsel for the petitioner as well as the learned counsel for the first respondents and perused the materials on record.

10. The learned counsel for the petitioner submitted that the first respondents/claimants were travelled in the load auto and as per permit condition and the judgment of the Hon'ble Apex Court, the petitioner is liable to pay compensation only for three persons. To substantiate his contention, he relied on F.I.R., which has no

merits. As per Ex.P10/charge sheet filed by the police, it has been stated that at the time of accident, the claimants were standing on the road.

11. The learned Judge considering the evidence on record and pleadings, accepted Ex.P10/charge sheet and held that the claimants sustained injuries, when they were standing on the road and they were not travelling in the load auto. The petitioner except examining his official did not examine any independent witness to substantiate their case that the claimants were travelling in the load auto and driver of the auto was not holding valid driving license at the time of accident.

12. The second respondent/owner of the load auto stated that the claimants were standing on the road at the time of accident, so they are only responsible for the accident.

13. Considering the materials on record in entirety, I hold that the claimants were not travelling in the load auto at the time of accident and the accident occurred, only when they were standing on the road. In the circumstance, the learned Judge rightly held that

the petitioner is liable to pay compensation. There is no irregularity or illegality in the judgment and decree of the Tribunal dated 30.06.2004.

14. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

04.08.2017

Index : Yes/No

Speaking/Non-Speaking Order

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To

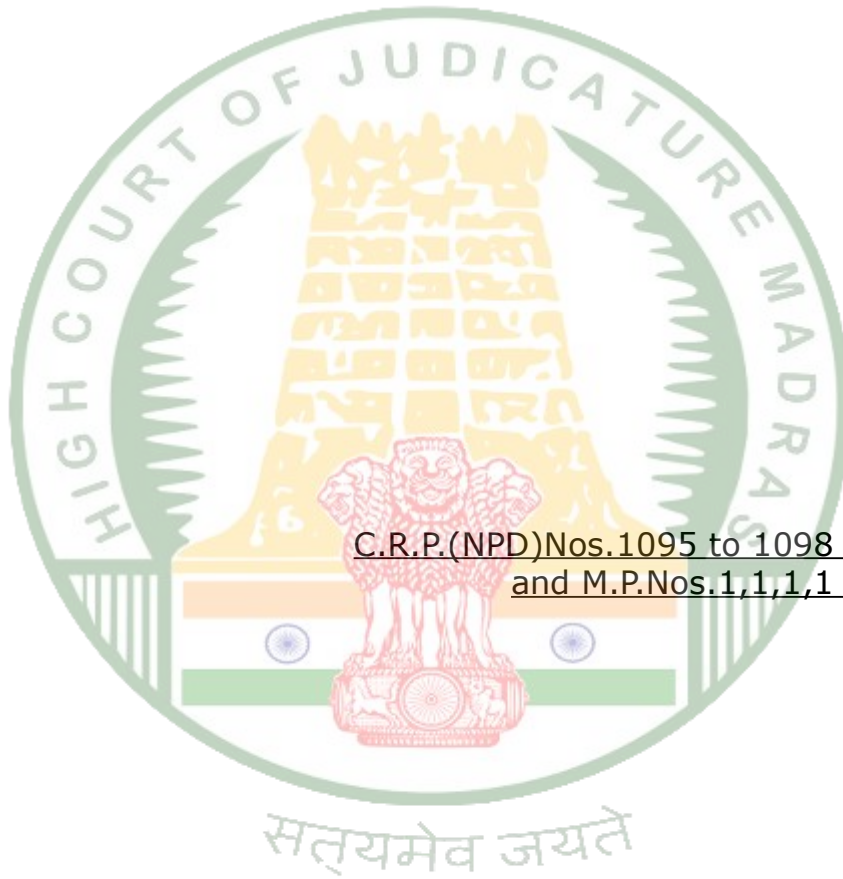
The Motor Accident Claims Tribunal
District Judge, Nagapattinam.

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V.M.VELUMANI, J.

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and M.P.Nos.1,1,1,1 of 2008

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