

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.1916 to 1918 of 2009
& M.P.Nos.1 of 2009

National Insurance Company Ltd.,
 Divisional Office,
 No.19, Officer's Line,
 1st Floor, Opp. Lakshmi Theatre,
 Vellore.

...

Petitioner in all CRPs

Vs.

Pushpa

Thirumoorthy

Minor Naveen
 represented by mother Sarguna

....

1st Respondent in all CRPs

2.P.Arun

3.M.R.Thajutheen
 CRPs

... Respondents 2 & 3 in all

सत्यमेव जयते

COMMON PRAYER : Civil Revision Petitions filed under Article 227 of the Constitution of India, against the award and decree dated 26.11.2008 made in MCOP Nos.55, 56 & 202 of 2004 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) Gudiyatham.

For Petitioner : Mr.D.Baskaran

For Respondents : Mr.G.Vinodh Kumar for R1
 in all CRPs

Not ready in notice Reg. R2

No appearance for R3

COMMON ORDER

These Civil Revision Petitions have been filed against the award and decree dated 26.11.2008 made in MCOP Nos.55, 56 & 202 of 2004 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) Gudiyatham.

2. The petitioner is the third respondent, the first respondent are the claimants and the respondents 2 and 3 are the respondents 1 and 2 in MCOP Nos.55, 56 & 202 of 2004. The parties are referred to as arrayed in the claim petitions.

3. According to the claimants, on 11.12.2003, while they were travelling in an Auto from Vellore to Paradharami, the first respondent who is the driver of the auto belonging to the second respondent, insured with the third respondent, drove the same in a rash and negligent manner and due to uncontrollable speed, caused the accident. All the claimants who travelled in the auto sustained grievous injuries and were admitted in the Government Hospital at Vellore for treatment. The accident occurred only due to the rash and negligent driving by the first respondent driver. The vehicle is insured with the third respondent. The second respondent is the

owner and the first respondent is the driver who drove the vehicle at the time of accident. Therefore, the claimants filed claim petition before the Tribunal claiming compensation against the respondents. The respondents 1 and 2 entered appearance but did not file any counter.

4. The third respondent / Insurance company filed counter and submitted that they did not issue any policy to the vehicle involved in the accident. The first respondent did not have any valid license to drive the auto.

5. Before the Tribunal, the claimants 1 & 2 were examined as PW1 & 2 and the mother of the third claimant was examined as PW3. Exs.P1 to P8 were marked on the side of the claimants. One Mathivanan, Investigating Officer was examined as RW1 and the investigation report was marked as Ex.R1 on the side of the 3rd respondent/Insurance company.

6. The Tribunal, considering the pleadings, oral and documentary evidence, came to the conclusion that the accident occurred only due to the rash and negligent driving by the driver of the vehicle. Further, it has observed that RW1 examined by the 3rd

respondent has failed to substantiate that 15 persons travelled in the auto and passed a common order allowing the claim petitions filed by the claimants thereby awarding a sum of Rs.7,500/- each as compensation.

7. Against the said common order dated 26.11.2008 made in MCOP Nos.55, 56 & 202 of 2004, the present Civil Revision Petitions are filed.

8. The learned counsel appearing for the third respondent submitted that the vehicle involved in the accident is a goods carriage and the claimants are unauthorised gratuitous / paid passengers in a goods carriage. The claimants themselves have admitted in the deposition that they travelled in a goods carriage. The learned counsel for the claimants submitted that the third respondent / insurance company has not examined any independent witness to substantiate the evidence of RW1 that 15 persons travelled in the goods carriage at the time of accident. Apart from the interested evidence, no witness was examined by the third respondent / insurance company to prove that the Auto was a goods carriage and 15 persons travelled in it.

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

10. The contention of the learned counsel for the claimants that the third respondent failed to prove that claimants travelled in goods carriage is untenable. The claimants themselves have admitted that they travelled in goods carriage as passengers. In view of the said admission, there is no necessity for the third respondent to prove that the claimants travelled in goods carriage. It is well settled that paid or gratuitous passengers travelling in goods carriage is not entitled to compensation from Insurance Company.

11. The accident is of the year 2004 and the amount awarded by the Tribunal is Rs.7,500/- to each of the claimants. Though the third respondent/insurance company is not liable to pay any compensation to the claimants who travelled as an unauthorised passengers in a goods carriage, considering the quantum of compensation awarded by the Tribunal in the above MCOPs, this court is of the opinion that all the Civil Revision Petitions are liable to be dismissed.

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

13. The learned counsel for the petitioner submitted that they have deposited 25% of the award amount. Hence, the third respondent is directed to deposit the balance of the award amount together with interest and costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the first respondents/claimants are permitted to withdraw the said amount, after adjusting the amount already withdrawn, if any.

Index : Yes/No
rgr

सत्यमेव जयते

08.08.2017

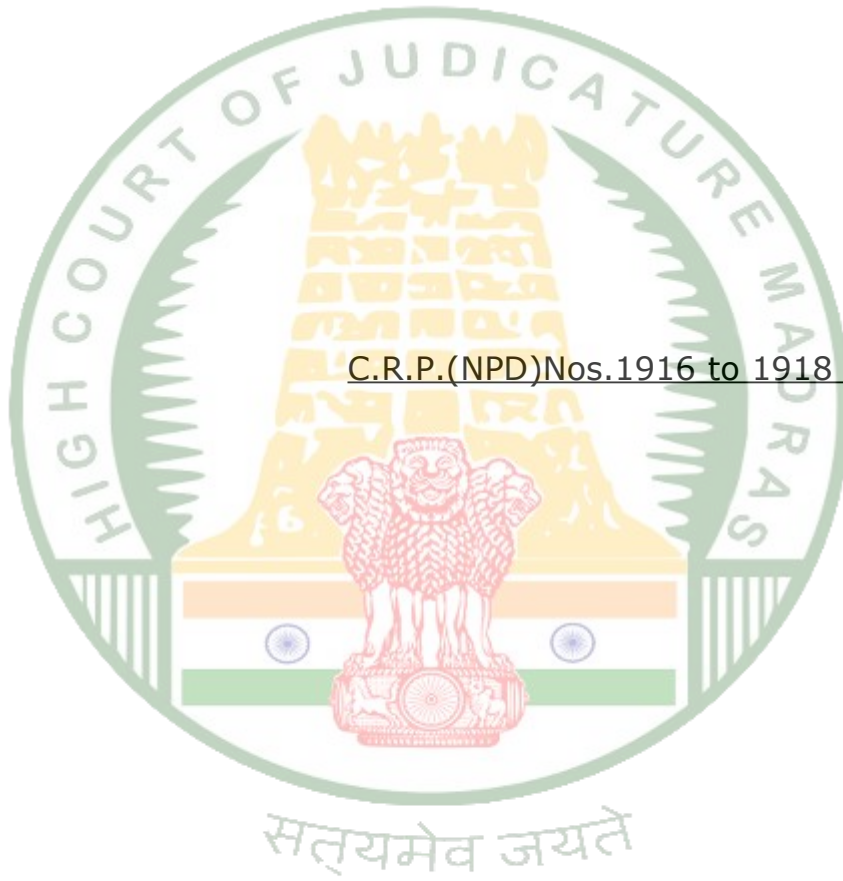
To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Gudiyatham.

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V.M.VELUMANI, J.

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