

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.2339, 1236 to 1238 of 2008
& M.P.Nos.1,1,1,1 of 2008
and C.R.P.(NPD)Nos.661 and 881 of 2009 &
M.P.No.1 of 2009

C.R.P.(NPD)No.2339 of 2008:

M/S.National Insurance Co. Ltd.
Branch office-I, P.B.No.15/1
Govindasampillai street
Near old bus stand, Salem-636 001.

.. Petitioner

Vs.

1.Chellammal

2.E.Sakthivel

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the award and decree dated 14.06.2006 made in M.C.O.P.No.1617 of 2003 on the file of the Motor Accident Claims Tribunal, Principal District Court, Salem.

For Petitioner : Mr.S.Arun Kumar

For R1 : Batta due

For R2 : Ms.N.Santhi Neelakandan

COMMON ORDER

C.R.P.Nos.2339 of 2008 and 881 of 2009 are filed against the award and decree dated 14.06.2006 and 05.04.2006 made in M.C.O.P.Nos.1617 and 1476 of 2003 respectively, on the file of the Motor Accident Claims Tribunal, Principal District Court, Salem.

2. C.R.P.Nos.1236 to 1238 of 2008 & 661 of 2009 are filed against the award and decree dated 24.04.2006 made in M.C.O.P.Nos.1471, 1611, 1612 and 1609 of 2003 respectively, on the file of the Motor Accident Claims Tribunal, Principal District Court, Salem.

3. All the civil revision petitions are arising out of the same accident, the issues to be decided in all the civil revision petitions are one and the same and therefore, they are disposed of by this common order.

4. The petitioner/insurance company is the second respondent, first respondents are the claimants and the second respondent/owner of the vehicle is the first respondent in the claim petitions. The parties are referred to as per their ranks in the claim petitions.

5. The claimants filed M.C.O.P.Nos.1617, 1471, 1611, 1612, 1609 and 1476 of 2003 claiming a sum of Rs.1,00,000/- each as compensation for the injuries sustained by them in the road accident that was occurred on 19.01.2003 at 8.30 a.m.

6. According to the claimants, they were travelling in the van belonging to the first respondent insured with the second respondent and they were carrying garlands, paddy, fire stick and other articles needed for funeral, due to rash and negligent driving by the driver of the van, the van capsized and all the claimants & others sustained injuries. According to the claimants and others, the accident occurred only due to rash and negligent driving by the driver of the van and a criminal case has been registered against the driver of the van in Crime No.28 of 2003 before the Valappady police station. First respondent is the owner of the van and second

respondent is its insurer and therefore, they filed the above said claim petitions against the respondents 1 and 2.

7. First respondent filed separate counter affidavits in all the claim petitions and submitted that the accident did not take place due to rash and negligent driving by the driver of the van. The first respondent is having valid insurance policy and the driver had valid driving license at the time of accident. The amounts of compensation claimed by the claimants are excessive.

8. Second respondent/insurance company filed separate counter affidavit and submitted that due to rash and negligent driving by the driver of the van, the accident took place. The said van is a goods vehicle and the passengers are not entitled to travel in the goods vehicle, which is in violation of the policy condition and therefore, the second respondent is not liable to pay any compensation and the first respondent/owner of the van alone has to pay the compensation. In any event, amounts of compensation claimed by the claimants are excessive.

9. Before the Tribunal, the claimants were examined as P.W.1 to P.W.4 and five documents were marked as Exs.P1 to P5. R.W.1 and R.W.2 were examined and two documents were marked as Exs.R1 and R2 on the side of the respondents.

10. The Tribunal considering the pleadings, oral and documentary evidence, policy condition and the judgments relied on by the counsel for the parties held that the accident occurred only due to rash and negligent driving by the driver of the van. Considering the nature of the injuries sustained by the claimants, the Tribunal awarded a sum of Rs.5,000/- each as compensation. The respondents are liable to pay the compensation and directed the second respondent to pay the amount at first instance and then recover the same from the first respondent.

11. Against the award and decree dated 14.06.2006, 24.04.2006 and 05.04.2006 made in M.C.O.P.Nos.1617, 1471, 1611, 1612, 1609 and 1476 of 2003 respectively, the present civil revision petitions are filed by the second respondent/insurance company.

12. Heard the learned counsel for the second respondent/insurance company/petitioner herein as well as the first respondent/owner of the vehicle/second respondent herein.

13. The contention of the learned counsel for the second respondent/insurance company is that the vehicle involved in the accident is the goods vehicle. As per the policy condition, only six employees of the owner of the vehicle can travel in the van. In violation of the policy and permit condition, 70 persons were travelled in the van and therefore, second respondent/insurance company is not liable to pay any compensation. In support of his contention, he relied on the following judgments:

(i) (2013) 11 SCC 554 (National Insurance Company Limited v. Savitri Devi and others);

(ii) 2004 (2) TNMAC 146 (DB) (United India Insurance Company Ltd., Vellore v. Chinnakannan and another);

14. It is well settled that the gratuitous passengers or unauthorised passengers are not entitled to claim compensation from the insurance company and if owner of the goods vehicle or his

representative travelled in the goods vehicle, they are entitled to claim compensation from the insurance company.

15. In the present case, the claimants have stated that they were travelling in the van with the goods needed for funeral and they are entitled to claim compensation from the insurance company. This contention has no merits. The goods viz. garlands, paddy, fire stick and other articles needed for funeral, which the claimants carried in that vehicle cannot be termed as goods to claim compensation from the second respondent/insurance company.

16. As far as the quantum of compensation is concerned, the Tribunal taking into consideration that the claimants have sustained only simple injuries, has awarded a sum of Rs.5,000/- each to the claimants as compensation, which is just and reasonable compensation and the same is hereby confirmed. The Motor Vehicles Act is a beneficial legislation in favour of the victims. The victims should not be denied their rightful compensation on technicalities. Taking into consideration that only a sum of Rs.5,000/- is awarded to each of the claimants, I hold that in the interest of justice and equity, this is not a fit case to set aside the award of the Tribunal.

17. Accordingly, the award passed by the Tribunal in the above said claim petitions is hereby confirmed and the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

07.08.2017

Index : Yes/No
Speaking/Non-speaking order

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To

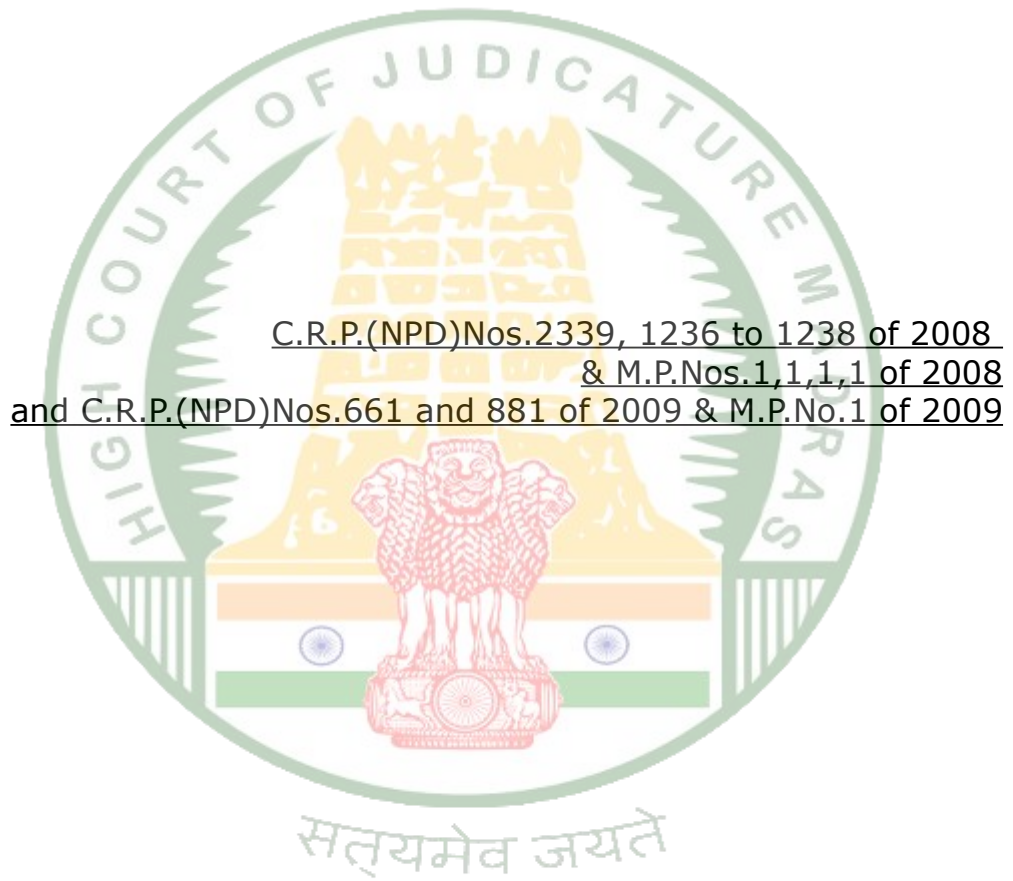
The Motor Accident Claims Tribunal
Principal District Judge, Salem.



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V.M.VELUMANI, J.

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