

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANIC.R.P.(NPD)Nos.2977 to 2989 of 2009

Branch Manager
The New India Assurance Co. Ltd.,
No.92, G.N.Chetty Road,
T.Nagar, Chennai-17 .. Petitioner in all C.R.Ps

Vs.

- | | |
|-------------------|--|
| 1. T.Sakkaraiya | .. 1 st Respondent in C.R.P(NPD).No.2977/2009 |
| 1. V.Masani | .. 1 st Respondent in C.R.P.(NPD)No.2978/2009 |
| 1. V.Murugan | .. 1 st Respondent in C.R.P.(NPD)No.2979/2009 |
| 1. M.Chakkaraiyan | .. 1 st Respondent in C.R.P.(NPD)No.2980/2009 |
| 1. A.Subramanian | .. 1 st Respondent in C.R.P.(NPD)No.2981/2009 |
| 1. V.Nachimuthu | .. 1 st Respondent in C.R.P.(NPD)No.2982/2009 |
| 1. N.Thangavel | .. 1 st Respondent in C.R.P.(NPD)No.2983/2009 |
| 1. R.Nataraj | .. 1 st Respondent in C.R.P.(NPD)No.2984/2009 |
| 1. P.Aruchamy | .. 1 st Respondent in C.R.P.(NPD)No.2985/2009 |
| 1. K.Subramaniam | .. 1 st Respondent in C.R.P.(NPD)No.2986/2009 |
| 1. M.Murugan | .. 1 st Respondent in C.R.P.(NPD)No.2987/2009 |
| 1. V.Mahalingam | .. 1 st Respondent in C.R.P.(NPD)No.2988/2009 |
| 1. T.Selvaraj | .. 1 st Respondent in C.R.P.(NPD)No.2989/2009 |

2. Arumugam .. 2nd Respondent in all C.R.Ps

3. S.Senthil Kumar .. 3rd Respondent in all C.R.Ps

PRAYER in all C.R.Ps: Civil Revision Petitions filed Under Article 227 of the Constitution of India, against the fair and decretal orders

dated 22.08.2005, made in M.A.C.T.O.P.Nos.213, 215, 216, 220, 223, 227, 232, 234, 235, 237, 238, 239 of 2003 and 29 of 2004, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Pollachi.

For Petitioner : Mr.M.Krishnamoorthy

For R1 : No appearance in C.R.P.(NPD)Nos.2977 to 2981, 2983 to 2986, 2988 and 2989 of 2009

For R2 : Exparte in all C.R.Ps

For R1 : Not ready in notice (C.R.P.(NPD)Nos. 2982 and 2987 of 2009)

For R3 : Not ready in notice (C.R.P.(NPD)Nos. 2977 to 2989 of 2009)

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decreetal orders dated 22.08.2005, made in M.A.C.T.O.P.Nos.213, 215, 216, 220, 223, 227, 232, 234, 235, 237, 238, 239 of 2003 and 29 of 2004, on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Pollachi.

2. The issues involved in all the civil revision petitions are one and the same, therefore, disposed of by this common order.

3. The petitioner Insurance Company is the third respondent, first respondent is the claimant, second respondent driver is the first respondent and third respondent owner is the second respondent in the M.A.C.T.O.P.Nos.213, 215, 216, 220, 223, 227, 232, 234, 235, 237, 238, 239 of 2003 and 29 of 2004. The first respondent in all the civil revision petitions, on 23.06.2003 were travelling in a goods carriage vehicle, driven by second respondent, belonging to third respondent, insured with the petitioner. On that day, the second respondent driven the vehicle in a rash and negligent manner and caused accident. The first respondent in all the civil revision petitions sustained injuries due to the accident and filed the claim petition, claiming a sum of Rs.50,000/- each as compensation. The third respondent owner of the vehicle filed counter affidavit in all the claim petitions and submitted that accident did not take place due to rash and negligent driving by the second respondent. The vehicle was insured with the petitioner and therefore, the petitioner alone is liable to pay the compensation. The petitioner filed counter statement and submitted that the first respondent travelled in goods carriage vehicle as paid passenger and therefore the petitioner is not liable to pay any compensation.

4. Before the Tribunal, the first respondent in all the civil revision petitions examined themselves as PW1 to PW13 and marked 18 documents as Ex.P1 to P18 and the third respondent examined himself as RW1 and marked one document as Ex.R1. The petitioner examined one Balusamy, Administration Officer of the petitioner as RW.2 and marked one document as Ex.R2. The Tribunal considering the pleadings, oral and documentary evidence and following the judgments of the Hon'ble Apex Court, came to the conclusion that accident took place only due to rash and negligent driving by the second respondent herein, driver of the vehicle and considering the nature of injuries, awarded a sum of Rs.8000/- to first respondent in all the civil revision petitions and directed the petitioner Insurance Company to pay at the first instance and recover the compensation from the third respondent.

5. Against the said orders dated 22.08.2005, made in M.A.C.T.O.P.Nos.213, 215, 216, 220, 223, 227, 232, 234, 235, 237, 238, 239 of 2003 and 29 of 2004, the present civil revision petitions are filed by the petitioner.

6. The learned counsel appearing for the petitioner submitted that the first respondent travelled in a goods carriage as a paid passenger, in violation of permit and policy condition and also submitted that there is no coverage for all the claimants. Therefore, the petitioner is not liable to pay any compensation. This Court and Hon'ble Apex Court, in number of cases, held that the gratuitous passengers, or paid passengers or unauthorized passengers are not entitled to claim compensation from the Insurance Company.

7. Heard the learned counsel appearing for the petitioner. Though notice was served on the first respondent and their names were printed in the cause list, there is no representation either in person or through counsel.

8. The issue, where paid passengers, gratuitous passengers or unauthorised passengers, travelling in a goods carriage is entitled to claim compensation from Insurance Company is no longer Res-integra. In number of judgments, this Court, as well as Hon'ble Apex Court have held that Insurance Company is not liable to pay any compensation in such circumstances. 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. The first respondent themselves admitted that they travelled as a paid passenger in the goods carriage. The Tribunal has awarded only a sum of Rs. 8,000/- as compensation to the first respondent in all the civil revision petitions. Considering the quantum of compensation awarded by the Tribunal in the interest of justice and equity, this is not a fit case to set aside the order of the tribunal, directing the petitioner to pay compensation at the first instance and recover the same from the third respondent.

9. For the above reason, all the civil revision petitions are dismissed. These orders shall not be a precedent for similar cases.

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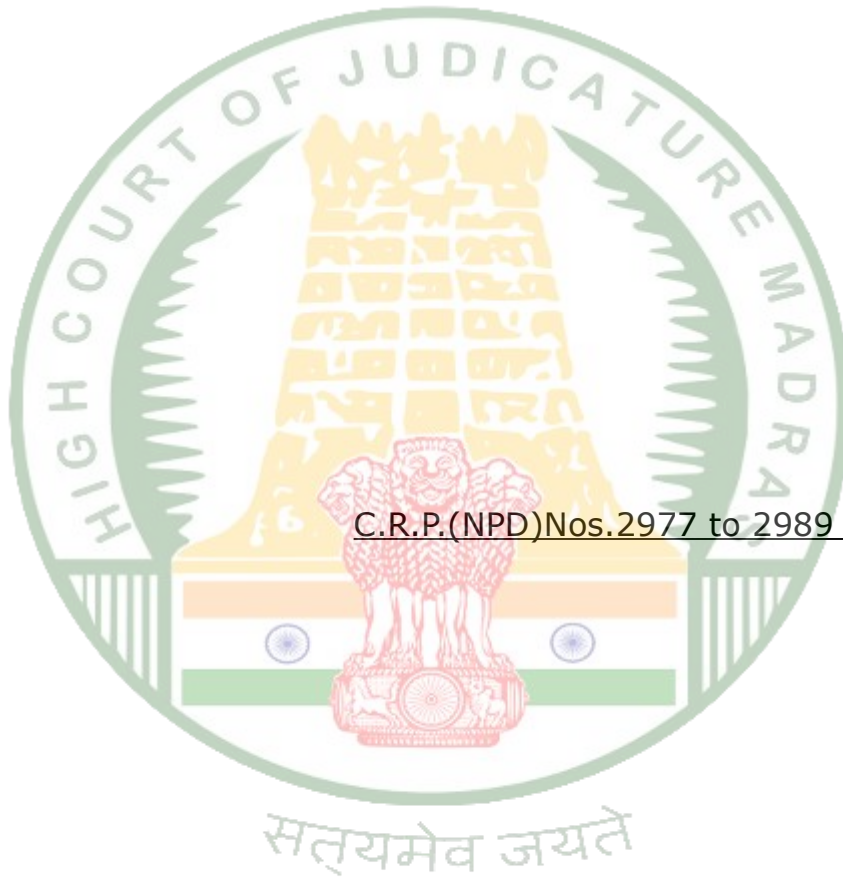
28.07.2017

Index : Yes/No
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To
The Subordinate Judge, Pollachi.

V.M.VELUMANI, J.

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