

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.2990 to 2993 of 2009
& M.P.Nos.1,1,1 of 2009

M/S.New India Assurance Co. Ltd.,
Mint Street, Chennai-1

.. Petitioner in
all CRPs.

Vs.

1.Singaravelu .. 1st Respondent in C.R.P.No.2990/2009
1.Subramani .. 1st Respondent in C.R.P.No.2991/2009
1.Subbarayan .. 1st Respondent in C.R.P.No.2992/2009
1.S.Lakshmi .. 1st Respondent in C.R.P.No.2993/2009

2.Suganthan

.. 2nd Respondent
in all CRPs.

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the judgment and decree dated 22.01.2003 made in M.C.O.P.Nos.316, 317, 338 and 340 of 2002 on the file of the Motor Accident Claims Tribunal, Subordinate Court (Fast Track Court No.I), Tindivanam.

For Petitioner : Ms.R.Sreevidya

CRP.Nos.2990 and 2991 of 2009

For R1 : No appearance
For R2 : Batta due

C.R.P.Nos.2992 and 2993 of 2009

For R1 and R2 : Batta due

COMMON ORDER

The Civil Revision Petitions are filed against the judgment and decree dated 22.01.2003 made in M.C.O.P.Nos.316, 317, 338 and 340 of 2002 on the file of the Motor Accident Claims Tribunal, Subordinate Court (Fast Track Court No.I), Tindivanam.

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

3. The petitioner is the second respondent, first respondents are the claimants and second respondent is the first respondent in all the claim petitions. First respondents in all the civil revision petitions filed claim petitions in M.C.O.P.Nos.316, 317, 338 and 340 of 2002 claiming Rs.10,000/- each as compensation for the injuries

sustained by them in the accident occurred on 31.05.1985. The first respondents originally filed claim petitions on the file of the District Court, Cuddalore, on 02.12.1985 claiming compensation. The said claim petitions were returned by the District Court, Cuddalore. The first respondents did not represent the said claim petitions. But on 12.03.1996, they filed the present claim petitions on the file of the Sub-Court, Tindivanam, claiming a sum of Rs.10,000/- each.

4. According to the first respondents, they were travelling in a lorry belonging to the second respondent insured with the petitioner. The driver of the lorry drove the vehicle in a rash and negligent manner and due to negligence of the driver of the lorry, the lorry over turned and the accident occurred. The lorry is insured with the petitioner. Therefore, they claimed compensation against both the petitioner and second respondent.

5. Second respondent filed separate counter affidavits and submitted that claim petitions were taken on file only on 12.03.1996 after 11 years of the accident and first respondents/claimants are not entitled to claim any interest from the date of accident. The lorry is insured with the petitioner and therefore, the second

respondent is not liable to pay any compensation.

6. The petitioner filed separate counter affidavits and submitted that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the second respondent. As the first respondents/claimants travelled as unauthorised passengers, the claim petitions have to be dismissed in respect of the petitioner/Insurance Company.

7. Before the Tribunal, the first respondents in all the civil revision petitions were examined as P.W.1 to P.W.4 and marked six documents as Exs.A1 to A6. The petitioner and second respondent did not let in any oral evidence, but marked one document as Ex.B1.

8. The Tribunal considering the pleadings, oral and documentary evidence, came to the conclusion that accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the second respondent. The learned Judge considering the nature of the injuries sustained by the first respondents and vehicle is insured with the petitioner, awarded a sum of Rs.5,000/- each to all the first respondents. The Tribunal has

also taken note that the vehicle is insured with the petitioner and directed the petitioner and second respondent to pay the compensation to the first respondents. The Tribunal further held that the first respondents are entitled to the interest only from 01.03.1996, when the claim petitions are taken on file.

9. Against the common judgment and decree dated 22.01.2003 made in M.C.O.P.Nos.316, 317, 338 and 340 of 2002, the present four civil revision petitions are filed by the petitioner/Insurance Company.

10. According to the learned counsel for the petitioner, the first respondents travelled as unauthorised passengers in violation of terms of policy condition. In view of the same, the petitioner is not liable to pay any compensation. It is not the case of the second respondent that the first respondents travelled in the lorry without his knowledge and consent. The driver of the lorry unauthorisedly carried the passengers. The first respondents in all the civil revision petitions are not covered by the policy issued by the petitioner. The Division Bench of this Court in the judgment reported in **2012 (1) TN MAC 89 (DB) (Royal Sundaram Alliance General**

Insurance Co.Ltd., No.45 & 46, Whites road, Chennai-600

014 v. P.Ayyakannu and another), held that Insurance Company is not liable to pay compensation for the injury or the death of a gratuitous or unauthorised passenger in a goods carriage. In para-10 of the said judgment, the Division Bench held as follows:

"10. Rule 236 provides that no person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation. In the paragraph extracted above from Anjana Shyam's case, the Supreme Court held that Section 149, cannot be understood as imposing a liability on the Insurer to make payment even in respect of those who have been loaded into the vehicle against the terms of the permit and against the terms of the condition of registration of the vehicle and that though the Insurer is bound to cover the third party risks in respect of passengers, the risks can only be understood to mean risks of passengers authorised or permitted to be carried in the said vehicle. We are bound by this judgment and therefore, we hold that the Insurer is liable to indemnify the liability only with regard to Ayyakannu who sat in the cabin of the vehicle and along with the driver and whose liability alone the

Insurer was bound to cover.”

11. Heard the learned counsel for the petitioner and perused the materials on record.

12. From the materials on record, it is seen that the first respondents travelled in the lorry as paid passengers. They travelled in the goods vehicle as gratuitous and unauthorised passengers. They are not covered by the policy issued by the petitioner. The judgment of the Division Bench of this Court is squarely applicable to the facts of the present case and petitioner is not liable to pay any compensation to the first respondents. At the same time, the Court has to keep in mind that the Hon'ble Apex Court has held that in the interest of justice and in equity, the insurance company must be directed to pay compensation at the first instance and recover the same from the owner of the vehicle.

13. In the present case, amount of compensation awarded to each of the first respondents is only meagre amount of Rs.5,000/- and interest has been awarded only from 01.03.1996, when the claim petitions were taken on file, even though accident was occurred on 31.05.1985.

14. Considering the above facts, applying the principles laid down by the Hon'ble Apex Court, award of the Tribunal is modified by directing the petitioner to pay compensation at the first instance and recover the same from the second respondent, owner of the vehicle.

15. With the above modification, the Civil Revision Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.07.2017

Index:Yes/No

Speaking/Non-speaking order:Yes/No

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To

The Motor Accident Claims Tribunal

Subordinate Judge

(Fast Track Court No.I), Tindivanam.

V.M.VELUMANI, J.

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C.R.P.(PD)Nos.2990 to 2993 of 2009
& M.P.Nos.1,1,1 of 2009

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