

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3500 of 2007
& M.P.No.1 of 2007

The Secretary
Shri Nehru Maha Vidyalaya
Matriculation High School
No.26, Raburston Road
Coimbatore-641 002.s

.. Petitioner

Vs.

1.Duraisamy

2.New India Assurance Co.Ltd.,
No.435, D.B.Road,
R.S.Puram
Coimbatore – 641 002.

.. Respondents

PRAYER: Civil Revision Petitions is filed under Article 227 of Constitution of India, against the fair and decretal order dated 18.08.2006 made in M.C.O.P.No.664 of 2002 on the file of the Motor Accident Claims Tribunal Cum (FTC No.IV), Coimbatore at Tirupur.

For Petitioner : Mr.Mukunth for
M/s.Sarvabhauman Associates

For R1 : Not ready in notice
For R2 : M/s.Malini for

Mr.N.Vijayaraghavan

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 18.08.2006 made in M.C.O.P.No.664 of 2002 on the file of the Motor Accident Claims Tribunal Cum (FTC No.IV), Coimbatore at Tirupur.

2. The petitioner is the first respondent, first respondent is the petitioner and second respondent is the second respondent in M.C.O.P.No.664 of 2002 on the file of the Motor Accident Claims Tribunal Cum (FTC No.IV), Coimbatore at Tirupur. The first respondent filed the said claim petition for compensation for the injuries sustained by him in the accident that took place on 12.11.2001.

3. According to the first respondent, on 12.11.2001, he was travelling in the bus bearing registration No.TDX.7686, belonging to the petitioner insured with second respondent. Due to rash and negligent driving by driver of the bus, the bus dashed against bridge and accident occurred. Due to the said accident, the first respondent sustained injuries. The First Information Report was registered against the driver of the bus. In the circumstances the first

respondent filed claim petition, against the petitioner and second respondent claiming a sum of Rs.3,00,000/- as compensation.

4. The petitioner filed counter statement and submitted that there was general strike in the month of November – 2001 by the Transport employees and as per the order of the Transport Authorities to operate the buses belonging to the private owners all the Private Vehicle owners operated their vehicle to meet out the emergency situation for the benefit of the general public. The petitioner also operated the school bus belonging to them to meet out the emergency situation. On 12.11.2001, the bus met with an accident. The bus was insured with the second respondent and therefore the second respondent liable to pay compensation amount if any awarded. The petitioner is not liable to pay.

5. The second respondent filed counter statement and submitted that the permit was issued to the petitioner only to transport the school children and staff. In violation of the policy and permit condition, the petitioner used the vehicle for transporting general public on 12.11.2001 on payment and therefore the second respondent is not liable to pay any compensation.

6. Before the Tribunal, the first respondent was examined as P.W.1 and marked five documents as Exs.P1 to P5. The petitioner examined one K.S.Kuppusamy as R.W.1 and marked Ex.R1. The second respondent examined one P.Soundrarajan as R.W.2 and marked two documents as Exs.R2 and R3.

7. The Tribunal considering the pleadings and both the oral and documentary evidence, came to the conclusion that accident occurred only due to rash and negligent driving by driver of the bus belonging to the petitioner and held that the petitioner used the vehicle for transporting the general public for payment violated the permit condition. For the said finding, the Tribunal held that the second respondent is not liable to pay any compensation and considering the nature of injury as sustained by the first respondent awarded a sum of Rs.5,000/- directing the petitioner to pay compensation to the first respondent.

8. Against the said award dated 18.08.2006 made in M.C.O.P.No.664 of 2002, the present Civil Revision Petition is filed by the petitioner.

9. The only point to be considered in the Civil Revision Petition, whether the petitioner violated the permit condition and due to which the second respondent is not liable to pay any compensation.

10. The specific contention of the petitioner is that there was a general strike by the workers of the Transport Department in the month of November – 2001 and for the benefit of the general public, the Authorities of the Transport Department and Regional Transport Officer, instructed the private vehicle owner to operate their vehicles for transporting general public. The vehicle in question belonging to the petitioner also used for transporting the general public to meet out emergency situation during the strike period. It is not in dispute that during that time, there was a general strike by the transport workers. In view of the undisputed fact, I hold that the Tribunal has not properly appreciated the evidence of R.W.1 let in by the petitioner. In view of the irregularities committed by the Tribunal, the award of the Tribunal is modified, holding that both the petitioner and second respondent are jointly severally liable to pay the compensation to the first respondent. In view of other aspects the award of the Tribunal is confirmed.

V.M.VELUMANI, J.

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11. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

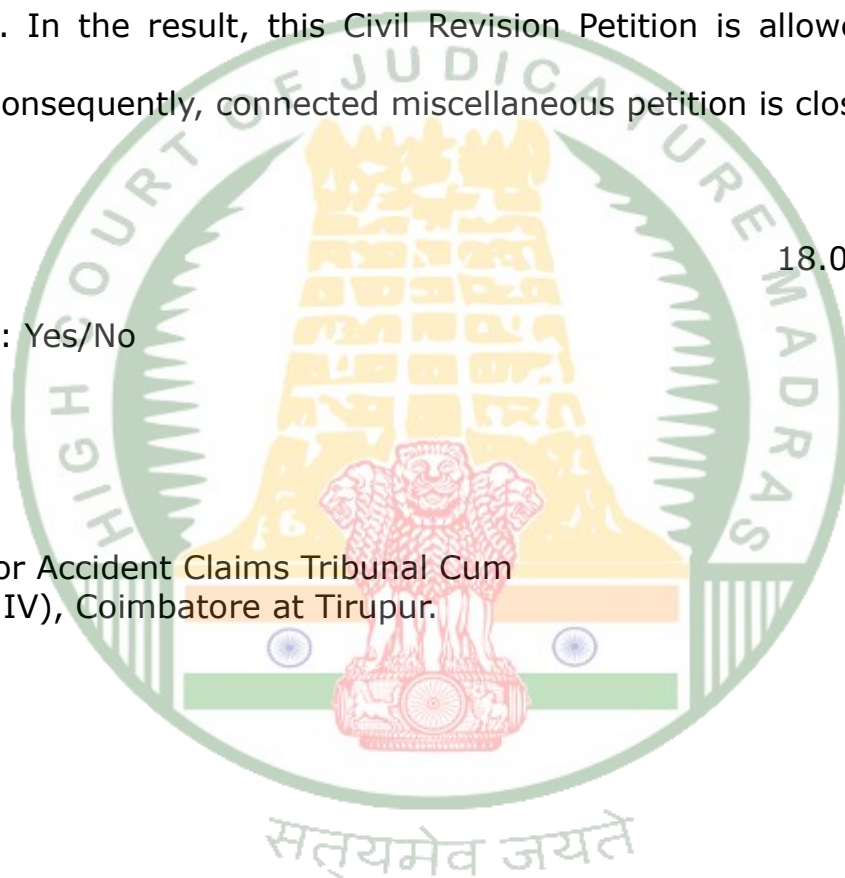
18.09.2017

Index : Yes/No

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To

The Motor Accident Claims Tribunal Cum
(FTC No.IV), Coimbatore at Tirupur.



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& M.P.No.1 of 2007