

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3614 of 2008
& M.P.No.1 of 2008

The New India Assurance Co. Ltd.,
Third Party Cell,
45 Moore Street,
Regina Mansion,
Chennai.

...

Petitioner

Vs.

1.Venkatesan Prasanth (Minor)
rep. by his father C.Pradeep Kumar

2.Mohammed Saleem

...

Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the
Constitution of India, against the judgment and decree made in
MACTOP No.5868 of 2003 on the file of the Motor Accidents Claims
Tribunal (Chief Judge, Court of Small Causes) at Chennai dated
07.09.2007.

For Petitioners : Mr.M.Krishnamurthy

For Respondents : Batta due

ORDER

This Civil Revision Petition has been filed against the judgment and decree made in MACTOP No.5868 of 2003 on the file of the Motor Accidents Claims Tribunal (Chief Judge, Court of Small Causes) at Chennai dated 07.09.2007.

2. The petitioner is the second respondent, the first respondent is the claimant and the second respondent is the first respondent in MCOP No.5868 of 2003 before the Chief Court of Small Causes, Chennai. The first respondent filed the above claim petition claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident that occurred on 12.04.2002. According to the first respondent, on the date of accident, while he was traveling alongwith other persons in the car belonging to the second respondent insured with the petitioner, due to the rash and negligent driving by the driver of the car, accident occurred and he sustained injuries.

3. The second respondent remained exparte before the Tribunal. The petitioner filed counter statement and additional counter statement and stated that the policy taken by the second respondent is only an act policy and occupants of the car are not

entitled to claim compensation from the petitioner. The car insured with the petitioner is only used for private purpose and the first respondent and others have travelled in the car as paid passengers and therefore the petitioner is not liable to pay any compensation to the first respondent.

4. Joint trial was conducted before the Tribunal. The first respondent and other claimants were examined as PWs1 to 3 and Doctor was examined as PW4. Seventeen (17) documents were marked as Exs.A1 to A17 on their side. The petitioner examined Administrative Officer as RW1 and marked copy of insurance policy as Ex.R1.

5. The Tribunal, considering the pleadings, oral and documentary evidence, especially the evidence of PWs2 & 3, came to the conclusion that the accident occurred only due to the rash and negligent driving by the driver of the car as well as unknown lorry which came in the opposite direction and grazed against the car and fixed the composite negligence on both the vehicles at the ratio of 50 : 50. Considering the nature of injuries sustained by the first respondent, the Tribunal awarded a sum of Rs.5,500/- as compensation and directed the petitioner to pay the compensation

to the first respondent and recover the same from the second respondent.

6. Against the said award dated 07.09.2007 made in MACTOP No.5868 of 2003, the present Civil Revision Petition has been filed.

7. The Civil Revision Petition is of the year 2008 and the respondents are not served. However, this Civil Revision Petition is taken up for hearing and the order is passed on merits, after hearing the learned counsel for the petitioner.

8. The only point urged before this Court by the learned counsel for the petitioner is that the policy issued by the petitioner is an Act Policy and occupants of the car are not covered under this policy. The first respondent and others have travelled in the car as paid passengers which is in violation of permit and policy condition and therefore the petitioner is not liable to pay any compensation to the first respondent. The learned Judge failed to consider this aspect. The said contention of the learned counsel for the petitioner is acceptable in view of various judgments of Hon'ble Apex Court and this Court. When owner of the vehicle has taken only an Act Policy, the Insurance Company is liable to pay

compensation only to third parties and the occupants of the car is not covered by Act Policy and Insurance Company is not liable to pay any compensation.

9. It is well settled that in number of judgments of the Hon'ble Apex Court and this Court, the Motor Vehicles Act with regard to compensation is a beneficial legislation and victim should not be deprived of the rightful compensation on technicality. Though the petitioner is not liable to pay any compensation, considering the quantum of compensation awarded by the Tribunal, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

10. The learned counsel appearing for the petitioner submitted that they have already deposited the entire amount awarded by the Tribunal. In view of the above said submission, the first respondent/claimant is permitted to withdraw the compensation amount, if not already withdrawn.

08.08.2017

Index : Yes/No
rgr

V.M.VELUMANI, J.
rgr

To

The Chief Judge,
Court of Small Causes,
Chennai.



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