

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.436 of 2007
and M.P.No.2 of 2007

M/s National Insurance Co.Ltd.,
Fort Station Road,
Trichy.

.. Petitioner

Vs.

1. Packiaraj
2. S.Rajeswari
3. K.B.Ramamani
4. The United India Insurance Co.Ltd.
Nethaji Road
Cuddalore.

... Respondents

(R2 & 3 are set exparte in
the Lower Court)

Civil Revision Petition filed under Article 227 of the
Constitution of India, against the judgment and decree dated
20.07.2004 made in M.C.O.P.No.279 of 2003 on the file of the
Motor Accident Claims Tribunal (Principal Subordinate Judge)
Vridhachalam.

For Petitioner : Ms.R.Sreevidhya

For R1 : Batta due

For R2 and R3 : Exparte

For R4 : No appearance

ORDER

This Civil Revision Petition has been filed against the judgment and decree dated 20.07.2004 made in M.C.O.P.No.279 of 2003 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) Vridhachalam.

2. The petitioner is the second respondent, first respondent is the claimant, respondents 2 to 4 are the respondents 1, 3 and 4 in M.C.O.P.No.279 of 2003 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) Vridhachalam. First respondent filed the above claim petition claiming a sum of Rs.25,000/- as compensation for the injuries sustained by him in the accident that took place on 24.02.2003.

3. According to the first respondent, he was travelling in the bus belonging to the third respondent bearing Registration No.TN-33-Z-2210 insured with the fourth respondent. At that time, driver of the lorry bearing Registration No.TN-31-R-1467 belonging to the

second respondent insured with the petitioner drove the vehicle in a rash and negligent manner, dashed against the bus and caused the accident. Due to the said impact, the first respondent sustained injuries and filed the claim petition claiming a sum of Rs.25,000/- as compensation.

4. The petitioner and fourth respondent filed separate counter statement blaming the drivers of the other vehicles. The respondents 2 and 3 remained exparte.

5. Before the Tribunal, first respondent examined himself as P.W.1 and marked 11 documents as Exs.P1 to P11. The petitioner and other respondents did not let in any oral and documentary evidence.

6. The Tribunal considering the pleadings, oral and documentary evidence especially Ex.P1/F.I.R., held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the second respondent insured with the petitioner. Considering the nature of the injuries sustained by the first respondent, the Tribunal awarded a sum of Rs.5,000/- as compensation.

7. Against the order dated 20.07.2004 made in M.C.O.P.No.279 of 2003, the present civil revision petition is filed by the petitioner.

8. Though fourth respondent/United India Insurance Company entered appearance through its counsel, there is no representation on behalf of them either in person or through counsel. The respondents 2 and 3 remained exparte before the Tribunal and therefore, their notice is dispensed with in the civil revision petition.

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

10. The learned counsel for the petitioner contended that the Tribunal erred in holding that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the second respondent and insured with the petitioner. The Tribunal failed to see that the drivers of both the vehicles are responsible for the accident.

11. In the order dated 18.11.2013 made in the connected

civil revision petitions in C.R.P.(NPD)Nos.291 to 294 of 2007 filed by the petitioner for the same accident, this Court held that both the drivers of the lorry belonging to the second respondent and bus belonging to the third respondent are responsible for the accident and modified the award of the Tribunal. In para-12 and 13 of the order dated 18.11.2013, it is held as follows:

"12. As pointed out above in the earlier paragraphs, most of the claimants, who were examined as witnesses, would depose that both the vehicles were driven in a rash and negligent manner and the Motor Vehicle Inspection reports pertaining to both the vehicles, would also disclose that the front portion of both the vehicles got heavily damaged and it implies that both the vehicles were driven in a rash and negligent manner. No doubt, the FIR came to be registered against the driver of the lorry; but, the fact remains that the result of the criminal prosecution is not made known. Therefore, in the light of the above said evidence available on record, this Court is of the view that the driver of the lorry as well as the driver of the bus had equally contributed to the accident.

13. In the result, all these civil revision petitions and the civil miscellaneous appeals are

partly allowed and the awards and decrees dated 10.09.2004, 11.10.2004 and 29.12.2004, passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Vridhachalam and the Motor Accident Claims Tribunal (Additional Subordinate Judge) at Vridhachalam respectively, are modified as follows:

“(i) The National Insurance Company, who is the insurer of the lorry bearing Registration No.TN-33 Z 2210, and the fourth respondent viz. the United India Insurance Company, who is the insurer of the bus bearing Registration No.TN-31 P 1467, have to pay the compensation to the respective injured claimants in equal proportion.

(ii) In other respects, the awards and decrees passed by the Tribunal dated 10.09.2004, 11.10.2004, 29.12.2004 respectively, are confirmed.

(iii) The respective claimants are entitled to withdraw the compensation deposited with accrued interest, and the excess amount deposited by the National Insurance Company, after apportionment, is permitted to be withdrawn by them.”

12. In the light of the above order, the award of the Tribunal is modified directing the petitioner and fourth respondent to pay the compensation to the first respondent equally. The learned

counsel for the petitioner submitted that award amount of Rs.5,000/- together with interest and cost was already deposited by him. Therefore, the petitioner is permitted to withdraw the excess amount if any, deposited by him.

13. In the result, the Civil Revision Petition is partly allowed.
No costs. Consequently, connected Miscellaneous Petition is closed.

27.07.2017

Index : Yes/No
Speaking/Non-speaking order
kj

To

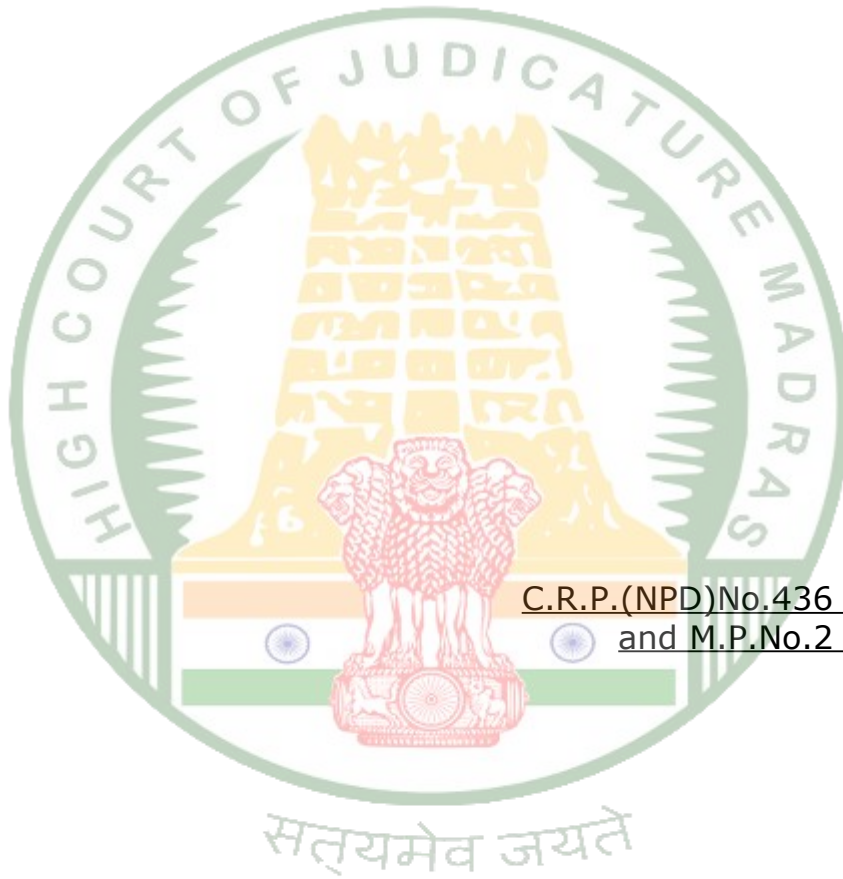
The Motor Accident Claims Tribunal
(Principal Subordinate Judge) Vridhachalam.



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V.M.VELUMANI, J.

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