

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.946 to 961 of 2013
and M.P.Nos.1 to 1 of 2013 (16 MPs)

The Branch Manager,
The New India Assurance Company Ltd.,
Nagapattinam having his office at
No.19, Neela South Street,
Nagapattinam Town Taluk and
District Munsif.

.. Petitioner
in all CRPs

Vs.

1.Ponnusamy

.. 1st Respondent in
C.R.P.No.946 of 2013

1.Balasubramanian

.. 1st Respondent in
C.R.P.No.947 of 2013

1.Sankar

.. 1st Respondent in
C.R.P.No.948 of 2013

1.Natarajan

.. 1st Respondent in
C.R.P.No.949 of 2013

1.Ponnusamy

.. 1st Respondent in
C.R.P.No.950 of 2013

1.Periyasamy

.. 1st Respondent in
C.R.P.No.951 of 2013

1.Anjan

.. 1st Respondent in
C.R.P.No.952 of 2013

1.Sekar	.. 1 st Respondent in C.R.P.No.953 of 2013
1.Kumarasamy	.. 1 st Respondent in C.R.P.No.954 of 2013
1.Latha	.. 1 st Respondent in C.R.P.No.955 of 2013
1.Minor Dhanalakshmi Rep. by her mother Guardian Latha	.. 1 st Respondent in C.R.P.No.956 of 2013
1.Jayabarathy	.. 1 st Respondent in C.R.P.No.957 of 2013
1.Iyyappan	.. 1 st Respondent in C.R.P.No.958 of 2013
1. Mohan	.. 1 st Respondent in C.R.P.No.959 of 2013
1.Balain	.. 1 st Respondent in C.R.P.No.960 of 2013
1.Rajendran	.. 1 st Respondent in C.R.P.No.961 of 2013
2.V.Kathiravelu	.. 2 nd Respondent in all CRPs

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the decree and judgment dated 10.06.2011 made in M.C.O.P.Nos.18, 20 to 25, 28, 29 and 31 to 37 of 2009 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Nagapattinam.

For Petitioner : Mr.Elveera Ravindran

For R1 : Mr.S.Nagarajan in CRP Nos.946 to 951,953 to 960 of 2013

For R1 : No appearance in CRP Nos.952 & 961 of 2013

For R2 : Not ready in notice (in all CRPs)

COMMON ORDER

The Civil Revision Petitions are filed against the decree and judgment dated 10.06.2011 made in M.C.O.P.Nos.18, 20 to 25, 28, 29 and 31 to 37 of 2009 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Nagapattinam.

2. The petitioner is the second respondent/Insurance Company, first respondent in all the Civil Revision Petitions are the claimants and second respondent is the first respondent in M.C.O.P.Nos.18, 20 to 25, 28, 29 and 31 to 37 of 2009 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Nagapattinam.

3. The issues involved in all the four Civil Revision Petitions are one and the same and hence, they are disposed of by this common order. The parties are referred to as per their ranks in the claim petitions.

4. According to the claimants, on 28.06.2006, they travelled in the van bearing Registration No.TN 55B 2170 from Thillaivilagam village to Ayakaranpulam First Sethi belonging to the first respondent. While the driver of the van was driving the van in a rash and negligent manner, a buffallow crossed the road and the driver of the van turned the vehicle towards left side and dashed against the Palmyra tree and caused the accident. Due to the said accident, the claimants sustained injuries. The first respondent is the owner of the vehicle, the second respondent is the insurer, both the respondents 1 and 2 are liable to pay the compensation.

5. The first respondent, who is the owner of the vehicle, filed counter and contended that at the time of accident, only 11 persons travelled in the van and the claimants must prove that they travelled in the van and sustained injuries due to the accident. In any event, the van was insured with the second

respondent/Insurance Company and only the second respondent is liable to pay the compensation.

6. The second respondent/Insurance Company filed counter and submitted that the accident did not take place due to rash and negligent driving by the driver of the van. The permitted capacity of the said van is only 12 passengers and driver, whereas more than 20 persons travelled at the time of accident. In view of the violation of permit and policy conditions, the second respondent is not liable to pay any compensation to the claimants.

7. Before the Tribunal, all the claimants were examined as P.Ws.1 to 17 and one Dr.Angathakumar was examined as P.W.18 and marked 38 documents as Exs.P1 to P38. The second respondent examined one Ganapathy Subramanian as R.W.1 and marked two documents as Exs.R1 and R2.

8. The Tribunal considering the pleadings, oral and documentary evidence, came to the conclusion that the accident took place only due to rash and negligent driving by the driver of the van. The Tribunal considering the restriction in the policy with

regard to the compensation payable at Rs.7,50,000/- and the compensation is payable only to 12 persons, held that the Court cannot pick and choose only 12 persons and considering the nature of the injuries sustained by the claimants, the Tribunal awarded a sum of Rs.7,500/- each to 16 persons for the simple injuries, whereas, usually Rs.10,000/- is awarded towards simple injuries. The Tribunal awarded a sum of Rs.59,500/- to only one claimant and to all other claimants, only awarded Rs.7,500/- as compensation.

9. Against the said award dated 10.06.2011 made in M.C.O.P.Nos.18, 20 to 25, 28, 29 and 31 to 37 of 2009, these Civil Revision Petitions are filed by the second respondent/Insurance Company.

10. Heard the learned counsel for the second respondent/Insurance Company as well as claimants and perused the materials available on record.

11. The learned counsel for the second respondent/Insurance Company relied on the judgment reported in **2011 (1) ACJ 917**

(United India Insurance Co. Ltd. v. K.M.Poonam and others)

and prayed for pay and recovery.

12. The contention of the learned counsel for the second respondent/Insurance Company that the Tribunal erred in holding that the compensation payable to the injured is Rs.7,50,000/- is not correct. The said amount is restricted only to the damages of the van and not for the injuries. The accident did not take place due to the rash and negligent driving by the driver of the van. In view of the violation of permit and policy conditions, the second respondent is not liable to pay any compensation. As per the permit condition, it is an admitted fact that only 13 persons including driver can travel in the van.

13. Admittedly, at the time of accident, more than 20 persons travelled in the van. In such circumstances, it has been held that in similar cases, the second respondent/Insurance Company is liable to pay the highest compensation amount awarded to the claimants. In the present case, the Tribunal considering the nature of the injuries, awarded a sum of Rs.7,500/- to the claimants, though they are entitled to Rs.10,000/- as compensation for minor injuries. In view

of the meagre amount awarded, the Tribunal has given valid and cogent reason for awarding the lesser amount to all the claimants. In the circumstances, I am not inclined to set aside the award passed by the Tribunal.

14. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.10.2017

Index : Yes/No
dm/kj

To

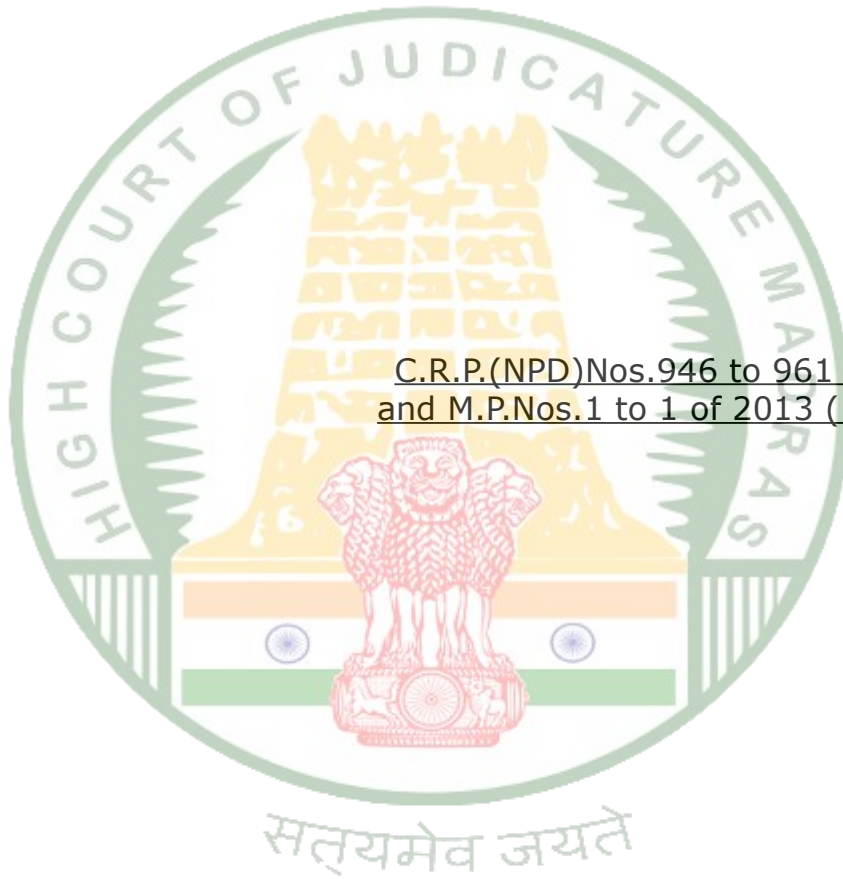
The Motor Accident Claims Tribunal
(Subordinate Judge), Nagapattinam.

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V.M.VELUMANI, J.

dm/kj



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