

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) Nos.841 to 860 of 2004
and C.M.P.Nos.6778 to 6797 of 2004

New India Assurance
Company Limited

...Petitioner in all CRP NPDs

vs.

Veeral	...1 st	Respondent	in CRP.841/04
Ponnammai	...1 st	Respondent	in CRP.842/04
Kittal	...1 st	Respondent	in CRP.843/04
Maral	...1 st	Respondent	in CRP.844/04
Vijaya	...1 st	Respondent	in CRP.845/04
Kalamani	...1 st	Respondent	in CRP.846/04
Bhagavathi	...1 st	Respondent	in CRP.847/04
Palanal	...1 st	Respondent	in CRP.848/04
Kalamani	...1 st	Respondent	in CRP.849/04
Lakshmi	...1 st	Respondent	in CRP.850/04
Ovan	...1 st	Respondent	in CRP.851/04
Veeran	...1 st	Respondent	in CRP.852/04
Kuppammal	...1 st	Respondent	in CRP.853/04
Karasuri	...1 st	Respondent	in CRP.854/04
Thirumal	...1 st	Respondent	in CRP.855/04
Nagammal	...1 st	Respondent	in CRP.856/04
Palanal	...1 st	Respondent	in CRP.857/04
Thirumal	...1 st	Respondent	in CRP.858/04
Dhanalakshmi	...1 st	Respondent	in CRP.859/04
Oval	...1 st	Respondent	in CRP.860/04

S.Thangavelu ...2nd Respondent in all CRPs

Prayer in all the CRPs: Civil Revision Petition filed under Article 227 of the Constitution of India, against the decree and judgement dated 20th day of November, 2002, made in M.C.O.P.No.291 to 310 of 2000, on the file of Motor Accident Claims Tribunal and Sub Court, Udumalaipettai.

For Petitioner : Mr.S.Manohar
For Respondents : No Appearance

COMMON ORDER

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These batch of 20 Civil Revision Petitions have been

filed by the Insurance Company separately challenging each of the Awards passed by the Motor Accident Claims Tribunal and Sub Court Udumalaipettai.

1.1. There are 20 Awards passed by the Motor Accident Claims Tribunal which are the subject matter of challenging.

1.2. The details of the respective revision petition corresponding to the respective Award are detailed below:

Compensation Award Amount together with Interest and Cost

S. No.	M.C.O.P. No.	Date of Award	CRP No.	Amount of Compensation in Rs.
1	M.C.O.P.No.291 /2000	20.11.2002	CRP No.841 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
2	M.C.O.P.No.292 /2000	20.11.2002	CRP No.842 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
3	M.C.O.P.No.293 /2000	20.11.2002	CRP No.843 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
4	M.C.O.P.No.294 /2000	20.11.2002	CRP No.844 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
5	M.C.O.P.No.295 /2000	20.11.2002	CRP No.845 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
6	M.C.O.P.No.296 /2000	20.11.2002	CRP No.846 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
7	M.C.O.P.No.297 /2000	20.11.2002	CRP No.847 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
8	M.C.O.P.No.298 /2000	20.11.2002	CRP No.848 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
9	M.C.O.P.No.299 /2000	20.11.2002	CRP No.849 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002

S. No.	M.C.O.P. No.	Date of Award	CRP No.	Amount of Compensation in Rs.
10	M.C.O.P.No.300 /2000	20.11.2002	CRP No.850 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
11	M.C.O.P.No.301 /2000	20.11.2002	CRP No.851 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
12	M.C.O.P.No.302 /2000	20.11.2002	CRP No.852 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
13	M.C.O.P.No.303 /2000	20.11.2002	CRP No.853 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
14	M.C.O.P.No.304 /2000	20.11.2002	CRP No.854 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
15	M.C.O.P.No.305 /2000	20.11.2002	CRP No.855 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
16	M.C.O.P.No.306 /2000	20.11.2002	CRP No.856 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
17	M.C.O.P.No.307 /2000	20.11.2002	CRP No.857 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
18	M.C.O.P.No.308 /2000	20.11.2002	CRP No.858 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
19	M.C.O.P.No.309 /2000	20.11.2002	CRP No.859 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002
20	M.C.O.P.No.310 /2000	20.11.2002	CRP No.860 of 2004 NPD	Rs.4,000 + Interest thereon at 9% p.a. from 05.06.2000 till 20.11.2002

In all the above mentioned Awards, the compensation awarded by the Tribunal under each of the Award is less than Rs.10,000/-. Under Section 173(2) of the Motor Vehicles Act, no appeal shall lie against any Award of a Claims Tribunal if the amount in dispute in the appeal is less than Rs.10,000/-. Since in the instant cases the statute bars filing of an appeal, the petitioner has filed these revision petitions. Since the issue involved in all the Civil Revision Petitions are one and the same, this Court is disposing of all the Civil Revision Petitions by a Common Order.

2.All the claims were disputed by the petitioner/Insurance Company before the Claims Tribunal on the ground that the respective claimant was a gratuitous passenger who was transported in a goods vehicle and therefore, the Insurer is not required to cover such risks of passenger as per Section 147 of the Motor Vehicles Act.

3.A learned Single Judge of this Court in a batch of Civil Revision Petitions in National Insurance Co. Ltd. V. Thangavel and Others reported in 2011 (1) TN MAC 785 held that the Insurer taking recourse to such ingenious methods of filing revisions when appeals are denied by law is an abuse of process of law. The relevant paragraphs of the said reported Judgment are as follows:

3.Whether such Petitions are maintainable:

3.1.The ground urged in the main Revision Petitions is that the Insurance Company did not cover passenger traffic. However, the learned Counsel is unable to submit as to how such a Revision is maintainable when the legislature itself never provided for any Appeal under Section 173(2) of the Motor Vehicles Act.

3.2.The purpose of legislature providing such compensation against third party claims as set out by the Supreme Court are as follows:

"13.Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third party risk by enacting Section 94? ...

... The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads...

...In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an Insurance Policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has, therefore, to be interpreted in the twilight of the aforesaid perspective.

(Ref:Skandia Insurance Co. Ltd.v.Kokilaben Chandravadan,1937 (2) SCC 654)

3.3.As to the maintainability of such a Revision under Section 115 of Code of Civil Procedure itself has come up for consideration by various High Courts. It is unnecessary to refer to all those decisions. It is suffice to refer only to some decisions in this regard:

3.4.The Himachal Pradesh High Court in Mittar Singh v.Ashish Kumar, 1998 (2) ACJ 1200 in paragraph 9 observed as follows:

"9....The Motor Vehicles Act is aimed to provide relief by way of compensation to the injured or the deceased in the given situation. The exercise of the powers by this Court under Article 227 of the Constitution of India should not be so exercised in order to circumvent the statutory provisions contained in a particular Act. Sub-section (2) of Section 173 of the Motor Vehicles Act clearly lays down that no Appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the Appeal is less than Rs. 10,000/-. The above said provision, thus, has to be read or construed in the manner so that the object of the provisions is not diverted."

3.5.The Kerala High Court inOriental Insurance Co. Ltd. v. Motor Accidents Claims Tribunal, Thalassery, 1999 (2) ACJ 1015 in paragraph 2 observed as follows:

"2....Once the legislature in its wisdom has thought it fit that no Appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the Appeal is less than Rs. 10,000/- this Court cannot lend its aid to the Petitioner to circumvent the statutory bar by enabling it to question the award collaterally by filing a Petition under Articles 226 and 227 of the Constitution of India. This Court cannot sit in judgment over the legislative wisdom and policy in regard to filing of Appeals, more so when it is remembered that right of Appeal is not a vested right or a Constitutional right but a creature of the statute. There is no inherent right of Appeal from the original forum unless such a right is created by the statute which creates the forum."

3.6.The Madhya Pradesh High Court in *New India Assurance Co. Ltd.v.Meghnath*, 2001 (1) ACJ 627 in paragraph 20 observed as follows:

"20....If it is held that Revision is maintainable at the behest of the Insurer or other persons liable to pay the compensation, where the amount is less than Rs. 10,000 the intent of the legislature would be defeated in its letter and spirit. Simpliciter, fact that the Tribunal is having trappings of the Civil Court, does not mean that in every case where the Appeal is specifically barred resort can be had to Revision. In other words, if Appeal lies on a question of law or a substantial question of law, Revisional powers cannot be invoked of the same Court on other grounds under Section 115, Civil Procedure Code. Revision is not a vested right... By necessary implication of the terminology used in Section 173, sub-section (2), right of Revision against a final award is not available. The Act envisages finality to be attached to the awards for an amount less than Rs. 10,000. Therefore, Revision being not a vested right it cannot be said that right of Revision is available even when the Tribunal is held to be Civil Court having the trappings of a Civil Court."

3.7.The Bombay High Court in *Subhash v.Kiran*, 2002 (3) ACJ 2101 in paragraphs 8 and 9 observed as follows:

"8....it is not permissible to frustrate the scheme provided by the law. If powers under Articles 226 and 227 of the Constitution of India are allowed to be exercised, then the entire scheme envisaged in Section 173(2) of the Motor Vehicles Act, 1988 will be defeated. If regard is had to the legal scheme with

regard to conferment of finality to the awards, which are less than Rs. 10,000, it is not at all permissible to nullify the legal scheme provided under Section 173(2) of the Motor Vehicles Act, 1988. Therefore, powers under Articles 226 and 227 cannot be permitted to be invoked and are not to be exercised to perpetuate breach of law or "breach of limits prescribed by law.

9. In case of New India Assurance Co. Ltd. v. Member, M.A.C.T., Udupi, 2002 ACJ 189 (Karnataka), the Single Judge of Karnataka High Court has held that powers under Article 226 of the Constitution cannot be allowed to be exercised to render statutory provision nugatory or redundant. In the case of National Insurance Co. Ltd. v. Vipul, 1999 ACJ 695 (HP), the Single Judge of the High Court of Himachal Pradesh has held that order of the Tribunal granting compensation less than Rs. 10,000 cannot be challenged in a Petition under Article 227. In case of Oriental Insurance Co. Ltd. v. Motor Accidents Claims Tribunal, Thalassery, 1999 ACJ 1015 (Kerala) Single Judge of Kerala High Court has held that the order of Tribunal awarding compensation less than Rs. 10,000 cannot be questioned in a Petition under Articles 226 and 227 of the Constitution. It is held that statutory power cannot be circumvented by filing Petition under Article 226 or Article 227 of the Constitution of India."

4. Whether the delay can be condoned?

4.1. As can be seen in the above said decisions, the Insurer were only the Nationalised Insurance Companies and notwithstanding such precedents, the Insurer is before this Court with these Civil Revision Petitions. Even in prosecuting such Revisions, due diligence is not shown and the reason adduced for condoning the delay of 1331 days (apprx. 4 years) is also not convincing. This Court is not inclined to condone such enormous delay.

4.2. Even on these Applications which was filed in the year 2007, the Respondents were not served till date. Even after 1200 days, the Respondents are yet to be served. The notice sent through Court had come back with an endorsement 'no such addressee' and in respect of the call made for fresh notice, the batta is yet to be filed.

4.3. When the matter came up before this Court, this Court directed the learned Counsel for the Petitioner to furnish the correct address of the Claimants. Though the Insurance Companies always

engage private investigating agencies to check the veracity of the claims, in this case were unable to find out the correct address of the Respondents. It is not as if the Claimants are fictitious persons. Before the Motor Accidents Claims Tribunal, 3 of them have examined as C.W.1 to C.W.3. After three adjournments, on 22.07.2010, the learned Counsel informed this Court that they are unable to locate the Respondents and they intend seeking permission to effect substituted service.

4.4. This Court however is not inclined to show any further indulgence considering the fact that the accident had taken place in June 2001 and the Claims Tribunal ordered paltry compensation in March 2002 and even after eight years, the Respondents are unable to be located and also the fact that under Section 173(2) of the Act, Parliament itself has denied right of Appeal. When the various Courts in India have deprived of the fact that Insurance Companies taking recourse to such ingenious methods of filing Revisions when Appeals are denied by law, the very filing of Revision itself is an abuse of process of law.

5. Penny Wise - Pound Foolish:

5.1. Even otherwise, the fiscal part of such attempt to make recovery makes one wonder the real motive of such Insurers coming up with the Revision Petitions.

5.2. The following will show that such attempt is not only not made out of any bona fide attempt to make recoveries but to litigate at the cost of public exchequer. It will be interesting to note that for a recovery of Rs. 6,000/- the amounts that may be approximately spent by the Insurer is as follows:

Value of Revision	: Rs. 6,000/-
Court Fee (paid)	: Rs. 100/-
Expenses in filing (apprx)	: Rs. 500/-
Counsel Fee	: Rs. 5,500/- (normal fee paid to High Court Panel Counsel appearing for Insurance Companies)

6. Making Mockery of National Litigation Policy:

6.1. While releasing the National Litigation Policy, the Law Minister of India had warned the Government Departments and agencies to be more responsible in filing and pursuing cases. The following news item published in "The Hindu" Daily

Newspaper dated 24.06.2010 may be usefully extracted below:

"Recognising that they contribute the maximum to Court cases, the new 'National Litigation Policy' enjoins on these organisations to think twice before resorting to any litigation.

The Policy statement makes it clear that "litigation will not be resorted to for the sake of litigating" and that "false pleas and technical points will not be taken".

Correct facts and all relevant documents should be placed before Court. Nothing should be suppressed or an attempt made to mislead any Court or Tribunal.

The Government must cease to be a compulsive litigant. "The philosophy that matters should be left to the Courts for ultimate decision has to be discarded" and "the easy approach, 'let the Court decide' must be eschewed and condemned".

6.2. Today in the field of insurance, when private operators are also in the field, a Public Sector Insurer must think twice before venturing into a litigation and must consciously make a cost-benefit analysis. They should not end up being penny-wise pound-foolish.

Hence, this Court has no hesitation to dismiss all the Civil Revision Petitions even at the SR stage. Accordingly, all the CRPs will stand dismissed. No costs. Consequently, connected Miscellaneous Petitions also will stand dismissed.

4. This Court is in agreement with the view taken by the learned Single Judge in the judgment reported in 2011 (1) TN MAC 785 referred to supra. The judgement cited by the learned counsel for the petitioner reported in 2013 ACJ 554 in the case of Manager, National Insurance Co. Ltd. v. Saju P. Paul and another will not apply and cannot be considered by this Court since the very maintainability of the revision petitions has been decided by this Court against the petitioner. Hence all these batch of Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petitions are also closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS II)

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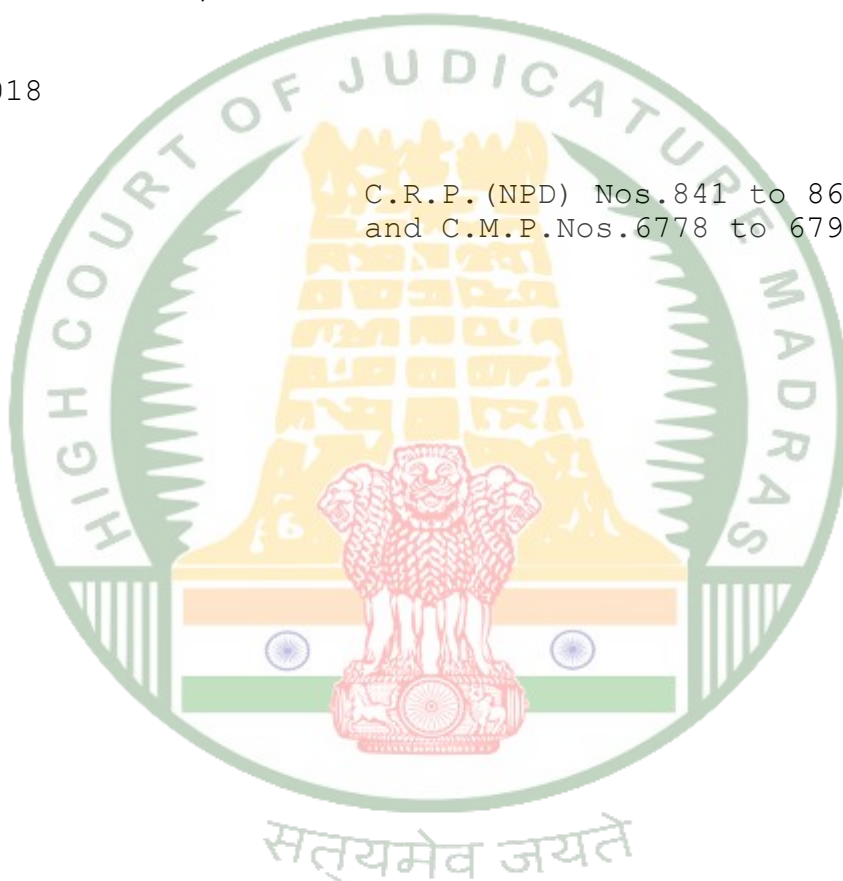
1.The Motor Accident Claims Tribunal and Sub Court,
Udumalaipettai

2.The Section Officer, VR Section,
High Court, Madras(2 copies)

+lcc to Mr.S.Manohar, Advocate SR.No.22438

SKV(CO)
sm:10.4.2018

C.R.P.(NPD) Nos.841 to 860 of 2004
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