



CRP.No.459 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Civil Revision Petition No.459 of 2007 &

M.P.No.2 of 2007

National Insurance Company Limited,
No.78, T.V.S. Street, Branch Office,
Erode Taluk and District.

... Petitioner

..Vs..

1. Subba @ Subbulakshmi
2. K.Murthy
3. P.Senthil Kumar
4. United Insurance Co. Ltd.,
No.3, Gobi Road, Gobichettipalayam Taluk,
Erode District.
5. Mariappan
6. I.Priya

... Respondents

Prayer: This Civil Revision Petition has been filed under Article 227 of Constitution of India to set aside the order and decretal order dated 16.12.2004 made in MACTOP No.197 of 2002 on the file of the II Additional Subordinate Judge, Gobichettipalayam.

For Petitioner : Mr.R.Thiagarajan



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For Respondents : Mr.S.Arunkumar – R4
No appearance – R1 to R3 & R5 & 6

ORDER

This Civil Revision Petition has been filed to set aside the order and decreetal order dated 16.12.2004 made in MACTOP No.197 of 2002 on the file of the II Additional Subordinate Judge, Gobichettipalayam.

2. The case of the claimant is that on 27.09.2001, at about 06.30 a.m., the claimant along with others were going for work in a mini auto-rickshaw bearing Registration No.TN-36-E-3170, in Sathiyamangalam-Paruppanpalayam Road, from East to West direction on the left side of the road and at about 07.45 a.m. When they were nearing Thandalampalayam road junction, a mini auto-rickshaw, bearing Registration No.TN-36-Z-7984, driven by the second respondent, came from West to North direction in a rash and negligent manner and hit the mini auto-rickshaw, due to which the claimants sustained grievous injuries. This petition has been filed by the claimant claiming Rs.1,00,000/- with interest at the rate of 6% per annum from the date of claim petition. Challenging the liability fixed on the



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appellant Insurance Company, the present Civil Revision Petition came to be filed.

3. The learned counsel appearing for the appellant submitted that the Tribunal ought not to have fixed the liability on the appellant Insurance Company, who is the insurer of the vehicle, in which the claimant was travelling, inasmuch as the accident was due to the negligence on the part of the driver of the other vehicle involved in the accident, which was insured with the fourth respondent Insurance Company. As such, fixing the liability on both the Insurance Companies on sympathetic grounds is not sustainable in law. Hence, the finding of the Tribunal to that effect has to be set aside.

4. Per contra, the learned counsel appearing on behalf of the claimant submitted that the Tribunal had considered all the evidence and materials on record and rightly awarded compensation to the claimant. Hence, the learned counsel prayed for dismissal of all this appeal.



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5. The accident took place while the claimant along with others were travelling in a mini auto-rickshaw. Totally 9 persons were travelling the said auto-rickshaw. Since the amount awarded to this petitioner is below 10,000/-, the claimant has filed the present Civil Revision Petition. In respect of other persons, as they have been awarded compensation above Rs.10,000/-, they have filed Civil Miscellaneous Appeals in C.M.A.Nos.384 to 391 of 2007. This Court while disposing of the above appeals by way of a Common Judgment dated 12.07.2019 has observed that the mini auto-rickshaw, in which the claimants were travelling, was a goods vehicle and hence, the appellant insurance company is not liable to pay any compensation, as per the guidelines framed in the policy, which was correctly taken into consideration by the Tribunal. Further having regard to the fact that the second respondent driver of the mini auto-rickshaw bearing registration No.TN-36-Z-7984 had died and third respondent, owner of the above vehicle, the fifth and sixth respondents, driver and owner of the mini auto rickshaw bearing registration No.TN-36-E-3170 respectively, had remained exparte, the Tribunal, to subserve the interest of justice, has directed the appellant and the fourth respondent/Insurance Companies to



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jointly pay the award amount to the claimants and later, recover the same from the respondents 3, 5 and 6 and finding that the same was correct, this Court dismissed all the Civil Miscellaneous Appeals stating that the Order passed by the Tribunal does not warrant interference. The same Order is applicable to the present petitioner also.

6. Accordingly, this Civil Revision Petition is dismissed. The petitioner and the fourth respondent/Insurance Companies are directed to deposit their respective share of 50% of the award amount with interest and costs, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Order. On such deposit, the Tribunal shall transfer the same to the Savings Bank account of the claimant through RTGS, within one week thereafter. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index:yes/no

Internet:yes

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To

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The II Additional Subordinate Judge,
Gobichettipalayam.



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J.NISHA BANU, J.

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