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C.R.P.No.773 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2022

C O R A M:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**C.R.P.No.773 of 2019**  
**and C.M.P.No.5095 of 2019**

Royal Sundaram Aliance Insurance Co. Ltd.,  
Sundaram Towers,  
Nos.45 and 46, Whites Road,  
Chennai – 600 014.

... Petitioner

Vs.

1. Hemalatha

2. Minor Nithesh

(Minor represented by her next  
Friend, guardian and mother Hemalatha)

3. Saratha

4. S.Senthilkumar

5. Duraisamy

6. P.Sivanmalaiappan

7. M.Kavitha

8. L and T General Insurance Company Ltd.,  
Policy NO.915105002583250000

... Respondents



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**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 17.08.2017 made in I.A.No.590 of 2016 in M.C.O.P.No.75 of 2015 on the file of the Special District Court at Erode (Motor Accidents Claims Tribunal), Erode.

For Petitioner : Mr.G.Vasudevan

For Respondents : Mr.M.Sivakumar  
for R1 to R3  
: Mr.K.Vinod  
for R8  
: No appearance  
for R4 to R7

### **ORDER**

This Civil Revision Petition is filed as against the order dated 17.08.2017 made in I.A.No.590 of 2016 in M.C.O.P.No.75 of 2015 on the file of the Special District Court at Erode (Motor Accidents Claims Tribunal), Erode.



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2. MCOP.No.75 of 2015 has been filed by the wife, son and mother of the deceased Chelladurai who died in the accident that occurred on 14.1.2014. In the said MCOP, 4<sup>th</sup> and 5<sup>th</sup> respondents herein and the revision petitioner herein were shown as respondents who are driver, owner and insurer of the Maruthi Omni Van in which the deceased travelled as a 3<sup>rd</sup> party.

3. During the pendency of MCOP.No.75 of 2015, revision petitioner herein who is the 3<sup>rd</sup> respondent in the MCOP, filed I.A.No.590 of 2015, for impleading the proposed parties as respondents 4 to 6 in the claim application.

4. The learned counsel for the revision petitioner/insurance company would submit that the goods van bearing Reg.No.TN 42 V 0275 involved in the accident was solely responsible for the accident. The proposed parties viz., the driver, owner and insurer of the goods van are necessary parties and so sought to implead the proposed



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parties in the MCOP. But the said I.A., was dismissed. Hence, as against the same, present revision petition is filed.

5. Mr.M.Sivakumar, learned counsel for respondents 1 to 3/claimants would state that the accident is of the year 2014, MCOP is of the year 2015. The revision petitioner/insurance company is having sufficient opportunity in the claim proceedings to dispute its liability with evidence. Hence, prayed for dismissal of the present revision petition and for a direction to the Tribunal for early disposal of the MCOP.

6. Heard both sides. I have gone through the order passed in I.A.No.590 of 2016. The learned Judge found that in the claim application, the claimants alleged that due to rash and negligent driving of Maruthi Van bearing Reg.No.TN 33 BC 5416, the accident had occurred; further, it is for the claimants to prove the same with evidence. If the claimants fail to prove the negligence of the Maruthi



Van driver, their claim would not have legs to stand. The learned Judge further referred to decision of the Apex Court reported in **2015 ACJ 1441 (SC)** wherein it is clearly laid down that in case of composite negligence, when two parties are at default, it is for the claimants to claim against either one of them or both.

7. The learned Judge pointed out that if it is the contention of the insurance company/petitioner in I.A.No.590 of 2016 that goods van was responsible for the accident and that they are not liable, they can prove the same in the MCOP with evidence to defeat the claim. Holding so, the learned Judge, dismissed the said I.A and further held that the petitioner/insurance company have sufficient opportunity in the claim proceedings to dispute its liability with evidence.

8. Finding no reasons to interfere with the impugned order passed by the learned Judge, this civil revision petition is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed with



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a direction to the learned Judge, Motor Accidents Claims Tribunal,  
Special District Court, Erode, to dispose of the claim in MCOP.No.75  
of 2015 within a period of six months from the date of receipt of a  
copy of this order No costs. Interim stay stands vacated.

**14.06.2022**

Index:Yes/No  
Speaking / Non speaking order  
nvsri/nti

To

1.The learned Judge, Special District Court,  
(Motor Accidents Claims Tribunal), Erode.

2.The Section Officer  
V.R.Section, High Court of Madras.



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**J.NISHA BANU, J.**

nvsri

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**14.06.2022**