IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 09.06.2023	*Delivered on 30.06.2023*

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.2700 of 2021
and C.M.P.No.19829 of 2021

The Authorized Signatory
M/s.Royal Sundaram General
Insurance Co., Ltd.,
Pondicherry. ...4th Respondent/7th Respondent/
Petitioner

-Vs-

1.The Authorized Signatory,
M/s.HDFC ERGO General Insurance
Co., Ltd., Puducherry. ...2nd Respondent/Petitioner/
1st Respondent

2.Ganga Mangesh Pohekar

3.Miss.Maitreyee Mangesh Pohekar (Minor)

4.Master Samarth Mangesh Pohekar (Minor)

Respondents 3 and 4 are minors
Represented by mother, next
Friend and Natural Guardian
Ganga Mangesh Pohekar – 2nd Respondent

5.Shri Vasant Laxman Pohekar ...Petitioner/Respondents 1 to 4/
Respondents 2 to 5

6.B.R.Krishnamoorthy ...1st Respondent/5th Respondent/

6th Respondent

7.Mrs.Chandriga @ Thahira ...3rd Respondent/6th Respondent/ 7th Respondent

Prayer:- Petition filed under Article 227 of the Constitution of India, against the order dated 07.04.2021 made in I.A.No.208 of 2021 in M.A.C.T.O.P.No.514 of 2017, on the file of the learned Second Additional District Judge, Puducherry.

For Petitioner	:	Mr.G.Vasudevan
For R1	:	Mr.S.Arun Kumar Standing Counsel
For R2 to R4	:	M/s.V.Kamala Kumar
For R5 to R7	:	No appearance

ORDER

The 4th Respondent in M.A.C.T.O.P.No.514 of 2017 had filed this Civil Revision Petition seeking to set aside the order passed by the learned Second Additional District Judge, Puducherry, in I.A.No.208 of 2021 in M.A.C.T.O.P.No.514 of 2017 dated 07.04.2021.

2.Brief facts which are relevant to decide this Civil Revision Petition are as follows:-

a) The 2nd Respondent / M/s.HDFC ERGO General Insurance Company Ltd., Puducherry, had filed Petition under Section 170 of the Motor Vehicles Act, 1988, in I.A.No.208 of 2021 in M.A.C.T.O.P.No.514 of 2017, seeking permission of the Court to take the defence available to its principle, the owner of the vehicle/1st Respondent in M.A.C.T.O.P.No.514 of 2017.

b) The said Petition was resisted by the 7th Respondent in I.A.No.208 of 2021 in M.A.C.T.O.P.No.514 of 2017, who is the 4th Respondent in M.A.C.T.O.P.No.514 of 2017, by filing counter and vehemently objecting to the Petition filed by the 2nd Respondent in M.A.C.T.O.P.No.514 of 2017.

c) After due enquiry, the said Petition was allowed by the learned Second Additional District Judge, Puducherry, as per order dated 07.04.2021.

3.Aggrieved by the same, the 4th Respondent in M.A.C.T.O.P.No.514 of 2017 as Revision Petitioner herein had approached this Court by filing this Civil Revision Petition under Article 227 of the Constitution of India, seeking to set aside the order passed by the learned Second Additional District Judge, Puducherry.

4.Thiru.G.Vasudevan, learned Counsel appearing for the Revision Petitioner. The learned Counsel for the Revision Petitioner contended that the Petition filed under Section 170 of the Motor Vehicles Act, 1988, is to be filed during the trial before proceedings in/with the evidence/enquiry. In this case, after cross-examination of the witnesses and when the case reached the stage of arguments, the learned Counsel for the 2nd Respondent / HDFC ERGO General Insurance Company Limited, Puducherry, in M.A.C.T.O.P.No.514 of 2017, which had insured the vehicle of the 1st Respondent in M.A.C.T.O.P.No.514 of 2017 had filed this Petition, seeking to permit the 2nd Respondent / HDFC ERGO General Insurance Company Limited, Puducherry, to cross-examine the witness on all the grounds that are available to the 1st Respondent/owner of the vehicle. The learned Trial Judge had allowed the Petition in spite of the vehement objections of the Respondents. Therefore, he seeks to set aside the order seeking permission of this Court to take all the defences that are available to the owner of the vehicle/1st Respondent in M.A.C.T.O.P.No.514 of 2017.

5.In support of his contention, the learned Counsel for the Revision Petitioner relied on the ruling of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Nicolletta Rohtagi and Others*** reported in ***2002 ACJ 1950***."

6.Thiru.S.Arun Kumar, learned Standing Counsel appearing for the 1st Respondent objected to the lines of argument of the learned Counsel for the Revision Petitioner, stating that it is a formality before proceedings with evidence. Permission is obtained by the HDFC ERGO General Insurance Company Limited, Puducherry, as the Insurance Company suspects that there is collusion between the owner of the vehicle/1st Respondent and the victims of the road accident to claim possession. The Petitioner had raised technicalities of law that will not help either the Petitioner or the Respondents but for the objection by the Respondents, the M.A.C.T.O.P.No.514 of 2017 would have been disposed of by the learned Second Additional District Judge, Puducherry, and the victims of accidents might have received compensation to relieve them from their pain. Therefore, this Petition has no merits and is to be dismissed.

7.In support of his contention, the learned Counsel for the Respondents relied on the ruling of the Hon'ble Supreme Court in the case of ***United India Insurance Company Limited Vs. Shila Datta and Ors.*** ***r***eported in ***2011 (2) TN MAC 481 (SC)***."

8.**Point for consideration:-**

> ***Whether the order passed by the learned Second Additional District Judge, Puducherry, allowing the I.A.No.208 of 2021 in M.A.C.T.O.P.No.514 of 2017, Petition filed under Section 170 of the Motor Vehicles Act, 1988, is to be set aside?***

9.On perusal of the Petition in I.A.No.208 of 2021 in M.A.C.T.O.P.No.514 of 2017, the affidavit of the Petitioner, counter filed by the Respondents and the order passed by the learned Second Additional District Judge, Puducherry, it is found that the learned Second Additional District Judge, Puducherry, had passed a reasonable order by allowing the 2nd Respondent/ HDFC ERGO General Insurance Company Limited, Puducherry, to take all defences that are available to the 1st Respondent/owner of the vehicle. In what way, the 4th Respondent, who is the Insurance Company for the vehicle involved in the accident, belonging to the 3rd Respondent is prejudiced by the order passed by the learned II Additional District Judge, Puducherry, is not properly explained. The 4th Respondent is the insurer of the 3rd Respondent's vehicle. The 2nd Respondent in M.A.C.T.O.P.No.514 of 2017 is the insurer of the 1st Respondent's vehicle. By allowing the Petition filed under Section 170 of the Motor Vehicles Act, 1988, filed by the 2nd Respondent permitting the 2nd Respondent to defend the Claim Petition to take all defences available to the owner of the vehicle/1st Respondent. How the 4th Respondent, who is the insurer of the 3rd Respondent, is prejudiced is to be explained merely on technicalities of law. The Petitioner had objected to the filing of the Petition under Section 170 of the Motor Vehicles Act, 1988, Petition before the Trial Court. If the learned Judge, had allowed the 2nd Respondent to cross-examine the witnesses on the side of the victims' Petitioner with the defence available to the 1st Respondent/owner of the vehicle, the objection by the 4th Respondent as insurer of the 3rd Respondent vehicle is not found to be reasonable. Merely on technicalities of law, he had been agitating for his right, which cannot at all be accepted. When two vehicles are involved in the accident, the victim does not know from whom he has to claim damages or compensation for the injuries suffered. Therefore, at the time of filing the motor accident claims cases, the Counsel through whom the Petitions are filed naturally impleads the offending vehicle and his Insurance Companies regarding the liability to be fixed, which is to be found out only during the trial/enquiry. Petition filed by the 4th Respondent on behalf of the 3rd Respondent, seeking permission to cross-examine witnesses on behalf of the owner of the vehicle 3rd Respondent had been allowed. While so, the objection by the 4th Respondent/Insurance Company objecting to the same Court allowing the 2nd Respondent to take all the defences that are available to the 1st Respondent is found unreasonable and illogical. The ruling cited by the learned Counsel for the Revision Petitioner having been overruled, the same is rejected.

10.In the light of the above discussion, Petition filed by the 4th Respondent in M.A.C.T.O.P.No.514 of 2017, seeking to set aside the order allowing the 2nd Respondent to contest the Motor Accidents Claims Petition with all the defences that are available to the 1st Respondent insurer vehicle, is found unacceptable. What is acceptable to the Revision

Petitioner is also the same for the other Insurance Companies.

11.When the learned Tribunal had allowed the Petition filed under Section 170 of the Motor Vehicles Act, 1988, Respondents 2 and 4/Insurance Companies permitting them to take all the defences available to the owners of the vehicles Respondents 1 and 3 insured vehicle, the Petitioner herein, who is also an Insurance Company, cannot object to a rival Insurance Company having been permitted by the Court to take all the defences available to the owner of the vehicle. What is permissible to the Petitioner/Insurance Company is also permissible to the rival Insurance Company of the Petitioner, the Respondent/Insurance Company. The Court cannot exercise to different yardstick to different Insurance Companies seeking the same relief to exercise all defences available to the owner of the vehicle insured with the Insurance Companies. It is unacceptable only principles of fairness, equity and good conscience which governs the Civil Courts in granting any reliefs under the law. The argument of the learned Counsel for the 4th Respondent in M.A.C.T.O.P.No.514 of 2017 is found to be hyper technical, which cannot be allowed in the motor accident claims case which is conducted as a summary proceeding. By allowing the Petition of the 2nd Respondent/HDFC ERGO General Insurance Company Limited, Puducherry, the 4th Respondent is in no way prejudiced. Therefore, the Petition is found to be misconceived.

12.In the light of the above, the point for consideration is answered against the Petitioner and in favour of the Respondents. The order passed by the learned Second Additional District Judge, Puducherry, allowing the I.A.No.208 of 2021 in M.A.C.T.O.P.No.514 of 2017, Petition filed under Section 170 of the Motor Vehicles Act, 1988, is not set aside. The same is confirmed.

13.In the light of the above discussion, this **Civil Revision Petition stands dismissed** confirming the order passed by the learned Second Additional District Judge, Puducherry, allowing the I.A.No.208 of 2021 in M.A.C.T.O.P.No.514 of 2017. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

30.06.2023

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

To

The Second Additional District Judge, Puducherry.

SATHI KUMAR SUKUMARA KURUP, J.,

cda

Order made in
C.R.P.No.2700 of 2021

30.06.2023