



C.R.P.(MD)No.2011 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2011 of 2024

and

C.M.P.(MD)No.11837 of 2024

National Insurance Company Limited,
140, Gandhikalaimandram Road,
Rajapalayam Taluk,
Virudhunagar District.

... Petitioner / Petitioner / 3rd Respondent

Vs.

Thangeshwaran (Died)

1.Ponnusamy

2.Poonkodi ... Respondents 1 & 2 / Respondents 1 & 2 /Petitioners

3.K.Eswaran ... 3rd Respondent / 3rd Respondent / 1st Respondent

4.Rajarathinam ... 4th Respondent / 4th Respondent / 2nd Respondent

5.P.Ramar ... 5th Respondent / 5th Respondent /
Proposed 4th Respondent

6.The Manager,

The New India Assurance Co. Ltd., T.P.(HUB),
CMTS Bhavan Building,
70 Feet Road, Ellis Nagar,
Madurai.

... 6th Respondent / 5th Respondent /
Proposed 5th Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 19.12.2023 passed in I.A.No.1 of 2023 in



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M.C.O.P.No.78 of 2019 on the file of the Principal Subordinate Court,
Sriyilliputhur.

For Petitioner : Mrs.P.Malini

For Respondents : Mr.M.Jothi Basu for R1 & R2.
Mr.C.Karthik for R6.
No appearance for R3 to R5.

* * *

ORDER

Heard the learned counsel for the petitioner, the learned counsel for the respondents 1 and 2 and the learned counsel for the sixth respondent.

2.The claimant in this case was travelling in an auto bearing Registration No.TN 84 B 4640. It collided with a tractor bearing Registration No.TN 84 D 0738. He was injured. He was also filed M.C.O.P.No.78 of 2019 before the Motor Accident Claims Tribunal (Principal Sub Court), Sriyilliputhur. In the said M.C.O.P, the National Insurance Company Limited was shown as the third respondent. The first respondent was the driver of the tractor. The second respondent is the owner of the tractor. The third respondent / revision petitioner herein is the insurer of the tractor.



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3.The claimant did not choose to implead the owner of the auto or the insurer of the auto. The third respondent in the M.C.O.P., namely the insurer of the tractor, National Insurance Company Limited filed I.A.No.1 of 2023 for impleading the owner of the auto as well as insurer of the auto. This I.A. was dismissed by the Court below vide order dated 19.12.2023. Challenging the same, this civil revision petition came to be filed.

4.It would be in the interest of the claimant if the owner of the vehicle in which he was travelling as well as its insurer are brought on record. It is because if the Tribunal comes to the conclusion that there was contributory negligence on part of the auto driver, then the entire liability cannot be fastened on the insurer of the other vehicle. But for reasons that are not quite clear, the claimant wants to oppose the impleading application. In fact, the insurer of the auto is also on the same page.

5.My attention is drawn to the decision reported in **2021 (1) TN MAC 794 (K.Kannaki Vs. A.Jalaludeen)** for the proposition that the claimant being the dominus litis cannot compelled to add parties who were not originally impleaded earlier and that it is for the claimant to decide and if such a case



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putforth by the claimant is not true, then he has to suffer the dismissal of the petition.

6.I make it clear that in the event of the Tribunal finding contributory negligence on the part of the auto driver, the entire liability cannot be fastened on the revision petitioner.

7.With this observation, the impugned order is sustained and the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The Principal Subordinate Court,
Srivilliputhur.



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G.R.SWAMINATHAN, J.

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