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C.R.P.No.297 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 10.02.2023

Delivered On : 30.06.2023

CORAM :

THE HON'BLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

C.R.P.No.297 of 2023

and

C.M.P.No.2434 of 2023

United India Insurance Co., Ltd.,
3rd Party Cell,
No.135, Silingi Buildings,
Greaves Road,
Chennai – 600 006.

Represented by its Manager. ... Petitioner/Petitioner/2nd Respondent

-VS-

1.Mythili

2.Arun @ Arunachalam

3.Neropa

: Respondents/Respondents/Petitioners

4.Najimal

: Respondent/2nd Respondent/1st Respondent

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 09.11.2022 made in M.P.No.2 of 2022 in M.C.O.P.No.7129 of 2017 on the file of the learned Judge, III Small Cause Court, Motor Vehicle Accident Claim Tribunal, Chennai.

For Petitioner : Mr.S.R.Sundar
for M/s.A.S.Subramanian
For Respondents : Mr.K.Ganesh Babu
1 to 3

ORDER



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The United India Insurance Company, the second Respondent in M.C.O.P. No.7129 of 2017 before the learned III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai, had filed this Civil Revision Petition under Article 227 of the Constitution of India seeking to set aside the order dated 09.11.2022 passed in M.P.No.2 of 2022 in M.C.O.P. No.7129 of 2017.

2.The learned Counsel appearing for the Revision Petitioner/United India Insurance Company, who is the second Respondent in M.C.O.P. No.7129 of 2017, had submitted that the Insurance Company had filed M.P.No.2 of 2022 in M.C.O.P. No.7129 of 2017 before the learned III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai seeking to summon the documents from the Neelankarai Police Station. The Petition was filed under Order XVI, Rule 7A of the Code of Civil Procedure to issue summons to the Inspector of Police, Neelankarai Police Station, Chennai.

3.It is the case of the Insurance Company, who is the second



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Respondent before the learned III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai that the claim petition filed by the dependants of the deceased, who were alleged to have been driving a two-wheeler bearing Registration No.TN-10-AP-6851 which is a fictitious number plate. The vehicle involved in the accident in which the rider of the two-wheeler died and the pillion rider sustained fracture. In the course of the investigation by the Traffic Investigation Wing of the Chennai City Police, it came to light that the original registration number of the two-wheeler was TN-07-BX-9595 which was found out by the Motor Vehicle Inspector in the course of the inspection of the motor vehicle involved in the accident. Therefore, on further investigation, it was found out that the vehicle was stolen from Neelankarai within the limits of Neelankarai Police Station, for which a complaint was received by the Neelankarai Police and based on which, Crime No.729 of 2017 was registered in Neelankarai Police Station for missing of the two-wheeler bearing Registration No.TN-07-BX-9595. Regarding the accident near Presidency College, Kamarajar Salai, Chennai, the Traffic Investigation Wing of the City Police had registered a case in Crime No.87 of 2017. On the date of alleged accident, the two-wheeler rider was riding a stolen vehicle with fictitious number plate.



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Therefore, he is presumed to have driven the vehicle fast to evade the police from detaining the vehicle rider as well as the vehicle. Under those circumstances, it is to be presumed that the rider was driving the two-wheeler rashly and negligently resulting in the accident, in turn resulting in the death of the two wheeler rider. The Insurance Company had clearly stated the facts in the counter filed in M.C.O.P. No.7129 of 2017 as Respondent No.2. While so, it is the duty of the second Respondent/Insurance Company to prove the contention raised by the second Respondent/Insurance Company in the M.C.O.P. No.7129 of 2017. In continuation of the same, the second Respondent in M.C.O.P.No.7129 of 2017 had filed M.P.No.2 of 2022 to summon the Inspector of Police, Neelankarai Police Station along with the copy of the FIR in Crime No.729 of 2017 of Neelankarai Police Station.

4.The Claimants in M.C.O.P.No.7129 of 2017 as Respondents in M.P.No.2 of 2022 vehemently objected the same. Based on the objection of the learned Counsel for the Respondents in M.P.No.2 of 2022, who are the Petitioners/Claimants in M.C.O.P.No.7129 of 2017, the learned III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai had

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dismissed the petition. Aggrieved by the same, the second Respondent who is the Petitioner in M.P.No.2 of 2022 had approached this Court by way of this Civil Revision Petition thereby to set aside the order dismissing the Petition in M.P.No.2 of 2022 in M.C.O.P.No.7129 of 2017.

5.The learned Counsel appearing for the Revision Petitioner/Insurance Company invited the attention of this Court to Column 10 of the Claim Petition in M.C.O.P.No.7129 of 2017 which are as follows:

10	Whether the person in respect of whom compensation is claimed travelling by the vehicle, involved in the accident. If so, give names of places of starting of journey and destination.	The deceased riding his motor cycle bearing Registration No.TN-10-AP-6851 from north to south at Presidency College, II Gate, Kamarajar Salai, Chennai – 5.
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6.Also, he had invited the attention of this Court to the contents of the counter in paragraphs No.4 and 5 which are as follows:

“3.At the outset, the Second Respondent stoutly denies the negligence on the part of the driver of the Car bearing Regn. No.TN-76-AB-5266 when the occurrence of the alleged accident on 12/03/2017 at about 19:15 hrs, since the deceased Kishore was driving the Two wheeler with a fictitious number plate bearing



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Regn. No.TN-10-AP-6851 being a stolen vehicle having its original registration No.TN-07-BX-9595 in a rash and negligent manner without driving license at Kamarajar Salai Opposite to Presidency College 2nd Gate Chennai resulting death in the Government General Hospital, Chennai.

4. This respondent states that the deceased used the stolen two wheeler bearing Registration No.TN-07-BX-9595 and fixed a fictitious number plate bearing Registration No.TN-10-AP-6851 at the time of accident. The accident has happened only because the deceased while using the stolen vehicle with a fear in the mind and being guilty of an offence under IPC Sec. 379.”

7.The learned Counsel appearing for the Revision Petitioner/Insurance Company had also invited the attention of this Court to the contents of the FIR in Crime No.729 of 2017 which was registered on 01.03.2017 for the offences under Sections 379 of IPC. The relevant portion is extracted as under:

“நான் வண்டலூரில் உள்ள கிரசண்ட் பொறியியல் கல்லூரியில் B.Tech Automobile Final Year படித்து வருகிறேன். எனது நண்பன் திரு. ஞானன் என்பவனுடன் 25.02.2017ம் தேதி மாலை 16.00 மணிக்கு கல்லூரி முடித்து அவர் வீடு உள்ள பெரும்பாக்கத்தில் கொண்டு போய்விட்டு விட்டு அவன் வீட்டில் இருந்த அவன் அம்மா பெயரில் உள்ள TN 07 BX 9595 என்ற எண்ணுள்ள பஜாஜ் டியூக் பைக் இன்ஜின் எண் 490649089 சேஸ் எண் VBKJUC4BTECO15119 என்ற வண்டியை எனது நண்பன் அவரது உறவினர் வீட்டுக்கு செல்வதால் அவன் ஓட்டும் வண்டியை நான் எடுத்து ஓட்டிவந்து நான் வசிக்கும் மேற்படி வீட்டின் முகவரியில் உள்ள எனது வீட்டின் முன்னிறுத்தி வைத்திருந்தேன்.



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இன்று 26.02.2017ம் தேதி காலை 7.00 மணிக்கு எழுந்து பார்த்தபோது மேற்படி வண்டியை நான் நிறுத்திய இடத்தில் காணவில்லை யாரோ எடுத்துச்சென்றுள்ளது போல் தெரியவருகிறது நானும் பல இடங்களில் தேடியும் வண்டி கிடைக்கவில்லை ஆகவே காணாமல் போன எனது வண்டியை கண்டுபிடித்து தருமாறு பணிவுடன் வேண்டுகிறேன்.”

8.The learned Counsel for the Revision Petitioner also invited the attention of this Court to the dates and events and submitted that the Insurance Company had filed Transfer Original Petition No.65 of 2021 seeking to transfer the connected O.P.No.2444 of 2017 from the Court of the learned II Judge, Court of Small Causes, Chennai to the learned III Judge, Court of Small Causes, Chennai. M.P.No.1 of 2021 seeking to reopen the evidence was allowed on payment of cost on or before 15.03.2022 failing which Petition will be dismissed on 16.03.2022. Cost paid and a memo to that effect was filed and posted for second Respondent's evidence. On 11.04.2022 the second Respondent made a mention before the learned Judge that the Transfer O.P.No.65 of 2021 is pending and seeking adjournment. Memo was filed on 25.04.2022. 27.04.2022 counter filed by the Respondents 1 to 3. On 13.06.2022 Transfer O.P.No.65 of 2021 heard and reserved for orders. On 28.06.2022 Transfer O.P.No.65 of 2021 was dismissed. On 01.09.2022 memo was filed by the Petitioner herein but



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Tr.O.P.No.65 of 2021 was dismissed. On 09.09.2022 M.P.No.2 of 2022 was filed by the second Respondent/Insurance Company to summon the Inspector of Police, Neelankarai Police Station where the theft records of the two-wheeler driven by deceased are available to ensure that the deceased was involved in theft as the number plate is tampered. On 22.09.2022 counter was filed in M.P.No.2 of 2022 by the Petitioner and after hearing the arguments of both sides, the case was posted for orders on 28.10.2022. On 09.11.2022 M.P.No.2 of 2022 was dismissed with costs. The case was posted to 16.11.2022 for further proceedings. On 16.11.2022 memo was filed by second Respondent seeking adjournment for four weeks for filing Civil Revision Petition against the dismissal order of M.P.No.2 of 2022. On 09.12.2022 Objection for memo was filed by the Petitioner. On 07.01.2023 Civil Revision Petition SR No./Stay to be produced on 03.02.2023. On 03.02.2023 memo filed by the Respondent seeking four weeks time was returned stating notice not given to other side but allowed to produce SR No. or stay in CRP on 08.02.2023. On 08.02.2023 memo was filed by the Respondent informing CRP numbered as 297 of 2023 is taken on record and posted to 09.03.2023.



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9.The learned Counsel appearing for the Revision Petitioner invited the attention of this Court to Section 30 of the Civil Procedure Code wherein this Court had ample power to summon any one and summon document with regard to enquiry or trial. While so, learned III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai, had misdirected himself and dismissed the Petition which is unwarranted and perverse. Therefore, the learned Counsel for the Petitioner seeks to set aside the order and allow this Civil Revision Petition to enable the Insurance Company to summon the Inspector of Police, Neelankarai and mark the FIR in Crime No.87 of 2017. Whether the claim petition is maintainable? Whether the Petitioners as dependants of the deceased are eligible to receive compensation are subject to the outcome of the trial in M.C.O.P. No.7129 of 2017? By dismissing the Petition, the learned III Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai, had dismissed the Petition at the threshold thereby denied the opportunity to the Insurance Company to prove their contention effectively during the enquiry in M.C.O.P.

10.The learned Counsel appearing for the Petitioner relied on the decision of the Hon'ble Supreme Court in *Mohammed Siddique and*
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Another -vs- National Insurance Company Ltd. and Others [AIR Online

2020 SC 29] wherein it has been held as under:

“13. ... Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked.”

Therefore, the dismissal of the petition by the learned III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai in M.P.No.2 of 2022 in M.C.O.P. No.7129 of 2017 is found to be unacceptable and unfair.

11.The learned Counsel for the Respondents/Claimants vehemently objected to the submissions of the learned Counsel for the Revision Petitioner/Insurance Company stating that the Petition filed by the Insurance



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Company is a belated petition. When the second Respondent/Insurance

Company has information regarding the stolen two-wheeler involved in the accident, the Petitioner herein as second Respondent Insurance Company should have clearly stated the same in the affidavit filed in M.P.No.2 of 2022. The learned III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai, had in the order in M.P.No.2 of 2022 clearly stated that the petition did not contain the crime number and details about how the theft crime is related to this accident. The Petitioner/Insurance Company, being a big concern with Investigation Officers, there is no details regarding basing on whose report, the Neelankarai Police has to be examined before this Court. Therefore, the objection of the learned Counsel for the Respondents in M.P.No.2 of 2022 and claim petition in M.C.O.P.No.7129 of 2017 is found reasonable. Therefore, exercising the power under Section 227 of the Constitution of India will not arise.

12.The learned Counsel appearing for the Respondents/Claimants before the trial Court had relied on the copy of the Investigation Report filed by the Revision Petitioner herein which is relied by the Claimants. The Investigation Report forms part of the typed set. Therefore, when the



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Investigation Report was already in the hands of the second Respondent/Insurance Company, what prevented them from summoning those documents at the earliest time before the Tribunal. The Insurance Company had taken many adjournments thereby preventing the Motor Accident Claims Tribunal from disposing of the claim petition for the dilatory tactics. Therefore, this order passed by the learned III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai, does not warrant any interference by this Court and this Petition is to be dismissed.

13.The learned Counsel appearing for the Respondents/Claimants relied on the decision of the Hon'ble Supreme Court in ***Rita Devi and others -vs- New India Assurance Company Ltd., and another [(2000) 5 SCC 113]*** and contented that in a case involving murder where the person travelling in the auto rickshaw was murdered by anti-social elements, the Hon'ble Supreme Court had held that even though the deceased died due to murder, the deceased being a passenger in the auto rickshaw, is entitled to compensation.



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14.By dismissing the petition as rightly pointed out by the learned Counsel for the Revision Petitioner/Insurance Company, the Insurance Company is prevented to discharge the burden of proof and to prove the contentions raised in the written statement.

15.The objection by the learned Counsel for the Respondents/Claimants, who are the original claimants before the Motor Accident Claims Tribunal/Court of Small Causes, placing reliance on the ruling of the Hon'ble Supreme Court in ***Rita Devi and others -vs- New India Assurance Company Ltd., and another [(2000) 5 SCC 113]*** stating that the person who travelled in auto rickshaw was murdered. Still the Hon'ble Supreme Court had held that the deceased has to be paid compensation as per the Motor Vehicles Act since he died in the auto rickshaw. At the time of death, he was a passenger in an auto-rickshaw (motor vehicle). The facts of the reported case will not be applicable to the facts of the case before this Court. Here the deceased person is not a passenger of the motor vehicle, the deceased person rode the two wheeler with false number plate after stealing the vehicle. Therefore, the reported



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ruling of Hon'ble Supreme Court relied by the learned Counsel for the Respondent is rejected.

16.The objection by the learned Counsel for the Respondents/original claimants before the Motor Accident Claims Tribunal is found unacceptable as it prevents the Insurance Company to prove their case regarding contributory negligence.

17.The apprehension expressed by the learned Counsel for the Respondents/Claimants that by allowing this petition, the Respondent before the Tribunal/Insurance Company is still protracting, thereby, delaying the award is also found unacceptable.

18.Whether the claimants as dependants of the deceased are entitled to the compensation is to be decided based on evidence available before the learned III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai. The dismissal of the petition in M.P.No.2 of 2022 in M.C.O.P.No.7129 of 2017 is found unreasonable and unacceptable on the ground that technicalities of law without evidence let in by the Insurance



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Company, the enquiry/trial will be favouring the claimants mechanically.

Therefore, the Revision Petitioner is justified in seeking to set aside the order of the learned III Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai.

19. In this case, as per the Investigation Report of the Insurance Company, the vehicle involved is a stolen vehicle from Neelankarai. In the stolen vehicle, the deceased was riding as a owner-cum-driver with a false number plate. In the Inspection Report, it was pointed out that the original number of the two-wheeler involved is No.TN-07-BX-9595. When there is sufficient proof available through material collected by the Insurance Company, it is for the Insurance Company to prove their contention. Before ever taking summons to the witnesses, the petition filed by the Insurance Company was dismissed thereby preventing the Insurance Company from proving their part of the evidence.

In the light of the above discussion, **this Civil Revision Petition is allowed.**



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The order dated 09.11.2022 made in M.P.No.2 of 2022 in

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M.C.O.P.No.7129 of 2017 on the file of the learned III Judge, Motor Vehicle Accident Claims Tribunal, Small Causes Court, Chennai, is set aside. The learned III Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai, is directed to dispose of the case after giving sufficient opportunity to both parties to cross-examine each of the witnesses. The learned III Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai, is within his/her power to pass appropriate orders and dispose of the case on merits as per law within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

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Internet : Yes / No



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To

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The III Small Cause Court,
Motor Vehicle Accident Claim Tribunal,
Chennai



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SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Order made in
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