

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2015

CORAM

THE HONOURABLE MR.**JUSTICE D.HARIPARANTHAMAN**

Review Application (Civil) No.303 of 2015

and M.P.No.1 of 2015

Bajaj Allianz General Insurance
Company Limited,
No.25/26, Prince Towers,
IV Floor, College Road,
Nungambakkan, Chennai-6.

... Petitioner

vs.

1.Kalaiselvi
2.Minor Bharath
3.B.N.Nasser

... Respondents

(Minor second respondent is
represented by his mother
and next friend)

Review Application has been filed to review the order
dated 15.9.2015 made in CRP PD No.3744 of 2015.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.V.Velu,
for R.1 to R.3

ORDER

Heard both sides.

2. Learned counsel appearing for the petitioner herein, who has filed the revision petition, has submitted that factually para 8 of the order dated 15.9.2015 made in C.R.P. (PD) No.3744 of 2015 is not correct and hence, he sought to correct the same. Learned counsel appearing for the respondents herein has not disputed the same. It is admitted by both sides that M.P.No.5763 of 2015 in M.C.O.P.No.4251 of 2010 is not rejected and the same is still pending.

3. Learned counsel appearing for the petitioner has brought to my notice para 8 of the order dated 7.9.2015 made in M.P.No.5763 of 2015 in M.C.O.P.No.4251 of 2010 and the relevant passage is usefully extracted hereunder:-

" Heard both side, perusal of records. Also sincerely perused and obediently followed the order passed by Hon'ble High Court in CRP No.2691/2015 dated 4.8.15. This Tribunal has opinion that the second respondent requested to submit their argument with available facts

with their own merits in main MCOP along with the above mentioned MP viz., reopen petition simultaneously on or before 14.9.15. If, there is any need or necessity to examination of further witness cited in the reopen petition filed by the petitioner / second respondent, this Tribunal shall pass suitable orders in the said petition. Otherwise, this Tribunal shall pass judgment in main MCOP on merits on 18.9.15. Further, the reopen petition has to be considered the first issue in the main MCOP also.

In the result, the M.P.No.5763/15 viz., reopen petition filed by the petitioner/second respondent tried along with main MCOP and the learned second respondent counsel requested to submit the arguments on or before 14.9.15. Call on 14.9.15. "

From the above passage, it is made clear that the petition in M.P.No.5763 of 2015 in M.C.O.P.No.4251 of 2010 is still pending.

4. Further, the learned counsel appearing for the petitioner submits that it is true that an attempt is made to bring another insurance company and both the Motor Accident Claims

Tribunal and this Court did not approve the same at this stage.

5. Further, the learned counsel appearing for the petitioner has submitted that the right of the insurance company to contest the matter is not in dispute even as per the order dated 15.9.2015 made in C.R.P (PD) No.3744 of 2015. He has further submitted that M.P.No.5763 of 2015 in M.C.O.P.No.4251 of 2010 was filed for the purpose of re-opening the case to examine the witnesses as per the memo filed along with M.P.No.5763 of 2015 in M.C.O.P.No.4251 of 2010, which is extracted in the order of the Tribunal dated 7.9.2015 made in M.P.No.5763 of 2015 in M.C.O.P.No.4251 of 2010. The list of witnesses is usefully extracted hereunder:-

1. Tata AIG Mr.Sivasubramanian, Assistant Manager.
2. Investigation Officer C/o.Inspector of Police,
D.4, Otteri Police Station, Kanchipuram in
Cr.No.229/2010.
3. Investigation Officer of criminal complaint filed by
the second respondent.
- 4.Truth Labs
5. Second respondent company officials.
6. Learned counsel appearing for the petitioner has further

submitted that in view of the order passed by the Motor Accident Claims Tribunal as well as this Court, the petitioner herein who is the second respondent in M.C.O.P.No.4251 of 2010 could not now seek to examine the first witness viz., Tata AIG Mr.Sivasubramanian, Assistant Manager at present and therefore, their right to examine the other witnesses should not be deprived and hence, an opportunity has to be given to the petitioner to summon those witnesses mentioned above except Sl.No.1.

7. In these circumstances, para 8 of the order dated 15.9.2015 made in C.R.P (PD) No.3744 of 2015 is modified as follows:-

" The Motor Accident Claims Tribunal passed an order dated 7.9.2015 in M.P.No.5763 of 2015 in M.C.O.P. No.4251 of 2010 and ultimately, M.P.No.5763 of 2015 is kept pending."

8. Further, the time limit prescribed by me in the order dated 4.8.2015 in C.R.P. (PD) No.2691 of 2015 for disposal of M.C.O.P.No.4251 of 2010 is extended upto 31.1.2016. I also make it clear that the petitioner herein shall be given an opportunity to

examine the witnesses to establish its case and the petitioner is entitled to examine the witnesses in the memo cited above barring witness No.1.

9. The review application is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

29.10.2015

Index:Yes/No
sbi

Note:
Issue order copy on 30.10.2015

D.HARIPARANTHAMAN, J

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(civil) No.303 of 2015**

DATED: 29.10.2015