IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 13.04.2017

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A. No.1483 of 2015

R.Krishnaveni ... Appellant/Claimant

Vs.

1. K.R.Pooranam

2. The Divisional Manager
ICICI Lombard General Insurance Company Ltd
1st Floor, Building No.142, ECR Main Road
Kottupalayam, Puducherry. ... Respondents/Respondents 1 & 2

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 13.10.2014 made in MACTOP No.666/2012, on the file of Motor Accident Claims Tribunal (III Additional District Judge), Puducherry.

For Appellant : Mr.T.Sundaranathan

For Respondents: No Appearance

JUDGMENT

(Made by S.MANIKUMAR, J.)

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Being aggrieved by the dismissal of MACTOP No.666/2012 on the file of Motor Accident Claims Tribunal (III Additional District Judge), Puducherry, mother of Mr.Rajesh S/o.Mr.Rajendran, stated to have died in an accident, which occurred on 15.06.2011, involving a motorcycle bearing Registration No.PY-01 BB-4102 and a Tata Indica Vista car bearing Registration No.TN-31 CY-3232, insured with ICICI Lombard General Insurance Company Ltd., Puducherry/2nd respondent herein, has filed the instant appeal.

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2. Contending inter alia that the Tribunal, has recorded a perverse finding in holding that the death was not proved, even though the Tribunal has observed that the oral testimony of PW1 and PW2-eyewitness is duly corroborated by Ex.P1-FIR registered in Crime No.351/2011 under Sections 279 and 304-A IPC against the driver of the Tata Indica Vista car bearing Registration No.TN-31 CY-3232, on the sole ground, the postmortem certificate was not filed, appeal has been filed. Appellant/mother has further contended that the Tribunal, ought not to have dismissed the claim petition in MACTOP No.666 of 2012 on the presumption that MACTOP No.102/2011 filed before the Motor Accident Claims Tribunal, Villupuram, was pending.

3. Having regard to the above said contentions, we directed the Court Officer, to verify the case details of MACTOP No.102/2011 filed on the file of Principal District Court, Villupuram. Computed generated details from "ecourts", shows that appellant R.Krishnaveni, has filed MACTOP No.102/2011 on 04.07.2011 before the Principal District Court, Villupuram. Case has been registered on 11.07.2011. First hearing date was 18.08.2011. It was disposed of. Computer generated "ecourts" details of MACTOP No.666/2012 further shows that R.Krishnaveni, appellant herein, has filed a claim petition on 12.09.2012 before the Principal District Court, Puducherry. Case has been registered on 12.09.2012. First hearing date was 29.10.2012. Thereafter, case has been posted on various dates and the computer generated details are as follows:

History of Case Hearing

Registration Number	Judge	Business On Date	Hearing Date	Purpose of hearing
300666/2012	III Additional District Judge	29-10-2012	03-12-2012	NOTICE
300666/2012	III Additional District Judge	03-12-2012	27-06-2013	NOTICE
300666/2012	III Additional District Judge	27-06-2013	09-07-2013	NOTICE
300666/2012	III Additional District Judge	09-07-2013	02-08-2013	NOTICE
300666/2012	III Additional District Judge	02-08-2013	22-08-2013	COUNTER
300666/2012	III Additional District Judge	22-08-2013	04-09-2013	COUNTER
300666/2012	III Additional District Judge	04-09-2013	14-09-2013	COUNTER

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300666/2012	III Additional District Judge	14-09-2013	27-09-2013	COUNTER
300666/2012	III Additional District Judge	27-09-2013	10-10-2013	COUNTER
300666/2012	III Additional District Judge	10-10-2013	30-10-2013	COUNTER
300666/2012	III Additional District Judge	30-10-2013	12-11-2013	EVIDENCE
300666/2012	III Additional District Judge	12-11-2013	27-11-2013	EVIDENCE
300666/2012	III Additional District Judge	27-11-2013	11-12-2013	EVIDENCE
300666/2012	III Additional District Judge	11-12-2013	09-01-2014	EVIDENCE
300666/2012	III Additional District Judge	09-01-2014	23-01-2014	EVIDENCE
300666/2012	III Additional District Judge	23-01-2014	06-02-2014	EVIDENCE
300666/2012	III Additional District Judge	06-02-2014	20-02-2014	EVIDENCE
300666/2012	III Additional District Judge	20-02-2014	07-03-2014	SUMMON
300666/2012	III Additional District Judge	07-03-2014	03-04-2014	SUMMON
300666/2012	III Additional District Judge	03-04-2014	10-04-2014	SUMMON
300666/2012	III Additional District Judge	10-04-2014	05-06-2014	SUMMON
300666/2012	III Additional District Judge	05-06-2014	12-06-2014	SUMMON
300666/2012	III Additional District Judge	12-06-2014	03-07-2014	SUMMON
300666/2012	III Additional District Judge	03-07-2014	24-07-2014	SUMMON
300666/2012	III Additional District Judge	24-07-2014	31-07-2014	SUMMON
300666/2012	III Additional District Judge	31-07-2014	07-08-2014	SUMMON
300666/2012	III Additional District Judge	07-08-2014	28-08-2014	SUMMON
300666/2012	III Additional District Judge	28-08-2014	06-09-2014	EVIDENCE

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300666/2012	III Additional District Judge	06-09-2014	25-09-2014	EVIDENCE
300666/2012	III Additional District Judge	25-09-2014	06-10-2014	ARGUMENTS
300666/2012	III Additional District Judge	06-10-2014	09-10-2014	ARGUMENTS
300666/2012	III Additional District Judge	09-10-2014	13-10-2014	ORDERS / JUDGMENT
300666/2012	III Additional District Judge	13-10-2014		Disposed

On 13.10.2014, case has been transferred to Special District Court dealing with MCOP cases, Villupuram.

4. Thus from the computer generated case history details of both MACTOP No.102/2011 filed on the file of Principal District Judge, Villupuram, now transferred to Special District Court, Villupuram for MCOP cases and MACTOP No.666/2012 on the file of Principal District Court, Puducherry, it is abundantly clear that, after the dismissal of MACTOP No.102/2011 on 18.08.2011, appellant/Krishnaveni has chosen to file a fresh motor accident claim in MACTOP No.666/2012 on the file of Principal District Court, Puducherry, without disclosing the filing of the earlier claim petition No.102/2011 and its dismissal.

5. Though, Mr.T.Sundaranathan, learned counsel for the appellant contended that the appellant would have signed many papers and that the same could have been misused, no complaint has been made to the competent authority against those who had allegedly misused the signed papers. At this juncture, judicial notice can be taken that whenever a claim petition is filed, presence of the claimant is required in the court and that the claimant has to make a specific statement about the nature of the case in brief and claim made. Appellant/R.Krishnaveni had already given such statement before the Principal District Court, Villupuram, when she presented the claim petition on 04.07.2011 and registered subsequently on 11.07.2011. Therefore, she cannot feign ignorance of the presentation of the claim petition by contending that signed papers might have been misused.

6. There appears to be a case of forum shopping. MACTOP No.102/2011 has been dismissed on 18.08.2011. Suppressing the same conveniently, appellant/R.Krishnaveni, has chosen to file another MACTOP No.666/2012 before the Principal District Court, Puducherry. Now MACTOP No.102/2011 is stated to have been restored to file and posted for evidence. There cannot be two parallel proceedings on the very same issue. Dismissal of MACTOP

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No.666/2012 cannot be said to be erroneous. Though Mr.T.Sundaranathan, learned counsel for the appellant, seeks to nullify the finding of the learned Motor Accident Claims Tribunal (III Additional District Judge), Puducherry that the death was not due to accident and sought for reversal, we are not inclined to so, but, at the same time, direct the Special District Court, Villupuram for MCOP cases, to consider the evidence adduced in proper perspective and take a decision.

With the above observation, civil miscellaneous appeal is dismissed. However, there shall be no order as to cost.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

asr

To

1. III Additional District Judge,
   The Motor Accident Claims Tribunal,
   Puducherry.

2. Section Officer,
   VR Section.

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