

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 03.03.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No. 507 of 2017

1. Muniammal
2. Madheswari
3. Murugayee
4. Thangayee

... Appellants/Petitioners

Versus

1. Kamalakannan,
2. Iffco Tokiyo General Insurance Co Ltd.,
195, 3rd floor, Thulasi Chambers,
T.V.Swamy Road, R.S.Puram,
Coimbatore.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the Judgment and Decree dated 21.12.2012 made in M.C.O.P.No.446 of 2011 on the file of the Motor Accident Claims Tribunal (Principal District Judge) Namakkal.

For Appellant : Mr.C.Kulanthaivel

For Respondents: Mr. J.Michael Visvasam for R-2
No appearance for R1

J U D G M E N T

Dismissal of the claim petition in M.C.O.P.No.446 of 2011 by the Motor Accident Claims Tribunal (Principal District Judge), Namakkal on 21.12.2012 is under challenge in this Civil Miscellaneous Appeal.

2. Initially, the injured Sai Lakshmanan filed M.C.O.P.No.188 of 2011, before the Subordinate Court, Sankari claiming compensation in respect of the injuries sustained by him on 17.02.2011. Pending the said claim petition, the injured died on 15.03.2011. After the death of the injured, the Legal Representatives of the deceased filed a Claim Petition before

the Motor Vehicle Accident Claims Tribunal, Namakkal in M.C.O.P.No.446 of 2012.

3. When the matter in M.C.O.P.No.446 of 2012 was taken up for enquiry, the fact that yet another claim petition was filed by the injured himself was brought to the knowledge of Claims Tribunal, Namakkal. There was also an effort to withdraw the claim petition in M.C.O.P.No.188 of 2011, filed by the injured, as not pressed. Accordingly, a Memo to effect has been filed before the Sub Court, Sankari in M.C.O.P. No.188 of 2011, by the claimants. Notice has been given to the Insurance Company and the Insurance Company made an endorsement stating 'No objection' and that has been recorded by the Claims Tribunal. Recording the Memo filed by the appellants, the Claim Petition in M.C.O.P.No.188 of 2011 was closed on 20/12/2012. It appears that copy of the said order had not been produced before the Claims Tribunal at the time of hearing of M.C.O.P.No.446 of 2011. Therefore, the Claims Tribunal has dismissed the Claim Petition filed by the Legal Representatives as not maintainable. The legality of the dismissal is under challenge in this Civil Miscellaneous Appeal.

4. The contention of the learned counsel appearing for the appellants/claimants is that the Claims Tribunal erred in dismissing the claim petition filed by the Legal Representatives, without properly verifying whether the claim petition filed by the injured himself is pending or not. When the Claim Petition filed by the injured himself is dismissed as withdrawn, there is no impediment for the Claims tribunal to take up and dispose of the Claim Petition filed by the legal representatives of the deceased. Therefore, he prays to allow this Civil Miscellaneous Appeal.

5. The learned counsel for the 2nd respondent submits that even though Insurance Company entered appearance in both the claim petitions, two different counsel having entered appearance in both the claim petitions the communication gap created by not bringing to light the dismissal of MCOP No.188 of 2011 to the counsel appearing in the other claim petition, the said fact was not placed before the Tribunal. It is also brought to the notice of this Court that even though the MCOP No.188 of 2011 was dismissed on 20.12.2012., the copies had been furnished only on 03.01.2013 and, therefore, it could not be produced before the Tribunal, when order was passed on 21.12.2012. Therefore, it is submitted that the 2nd respondent/insurance company was not in a position to inform this Court about the dismissal of MCOP No.188 of 2011, which was dismissed as withdrawn.

6. This Court gave its anxious consideration to the contentions/submissions advanced by the learned counsel appearing on either side and perused the materials available on

record as also the order passed by the Tribunal.

7. It is evident from the records that though, the copy application pertaining to the order passed in M.C.O.P.No.188 of 2011 was produced before the Tribunal, which was accepted by the Tribunal, however, no effort seems to have been made by the Tribunal to ascertain the status of the claim petition in MCOP No.188 of 2011. It would not have been difficult for the Tribunal to ascertain the status of the claim petition before embarking upon hearing the matter and concluding the same. Had the said exercise been done properly, the Tribunal could have taken up the matter and decided the same on merits. However, the Tribunal has simply proceeded to dismiss the claim petition in MCOP No.446 of 2011 filed by the legal representatives of the deceased, stating that the second claim petition at the instance of the claimants is not maintainable. Per se, the above order passed by the Tribunal without ascertaining the order passed in the earlier petition is wholly unjustified and is liable to be interfered with.

8. For the reasons aforesaid, the Civil Miscellaneous Appeal is disposed of and the order passed by the Tribunal in M.C.O.P.No.446 of 2012 is set aside and the matter is remanded back to the Tribunal. The Tribunal is directed to give sufficient opportunity to both sides and after hearing the parties, pass orders on merits and in accordance with law as expeditiously as possible. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

arr/GLN
To

1. The Motor Accident Claims Tribunal,
(Principal District Judge)
Namakkal.

2. The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.C.Kulanthaivel Advocate sr 14298

+1cc to Mr.J.Michael Visuvasam Advocate sr 14101

C.M.A. No.507 of 2017

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