

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2460 of 2011

Ganesan (died)

- 1.Chandra
- 2.Sarathkumar
- 3.Minor Nandhini
- 4.Minor Ranjithkumar

(Minors 3 and 4 are represented by next friend and mother 1st petitioner)

5.Kandayee

.. Petitioners

Vs.

1.Selvaraj

2.The New India Assurance Company Ltd.
1360, Amman complex, E.V.N.road
Erode-638 011.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated

22.07.2010 made in I.A.No.150 of 2010 in M.C.O.P.No.954 of 2005 on the file of the II Additional Subordinate Judge, Salem.

For Petitioners : Mr.C.Kulanthaivel

For R1 : Died

For R2 : Mr.S.Manohar

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 22.07.2010 made in I.A.No.150 of 2010 in M.C.O.P.No.954 of 2005 on the file of the II Additional Subordinate Judge, Salem.

2. The petitioners are the legal heirs of the claimant viz., deceased Ganesan and the respondents are the respondents in M.C.O.P.No.954 of 2005. The said Ganesan filed the above M.C.O.P. claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that was occurred on 31.03.2004. Pending M.C.O.P., he died on 22.05.2007. The petitioners filed I.A.No.150 of 2010 for impleading them as legal heirs of the deceased Ganesan/claimant.

3. According to the petitioners, they have spent a sum of Rs.2,00,000/- towards transportation and medical expenses and the deceased Ganesan died only due to the injuries sustained by him in the accident. Therefore, they entitled to continue for proceeding the M.C.O.P.

4. The second respondent/insurance company filed counter affidavit and opposed the said application on the ground that they are disputing the treatment alleged to have been taken for the deceased and his death due to the injuries sustained by him in the accident. The second respondent further stated that no post-mortem was conducted for the death of deceased Ganesan/claimant to prove the cause of death and the petitioners filed the present application to implead them as legal heirs of the deceased Ganesan only after three years of his death, which is barred by limitation.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application holding that the petitioners ought to have filed application within 90 days from the date of death of deceased Ganesan and the application filed after three years is not maintainable.

6. Against the order of dismissal dated 22.07.2010 made in I.A.No.150 of 2010, the present civil revision petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners as well as the learned counsel for the second respondent/insurance company and perused the materials on record.

8. The learned counsel for the petitioners submitted that the petitioners filed application to condone the delay in filing the application to implead them as legal heirs of the deceased Ganesan. The said application was returned on the same day. The learned Judge erred in dismissing the application to bring the legal heirs of the deceased after numbering the petition to bring on record the legal heirs of the deceased.

9. The contention of the learned counsel for the second respondent/Insurance Company that after three years of the death of the said Ganesan, the petitioners have filed the application to bring them on record as his legal heirs and the learned Judge has rightly dismissed the application as not maintainable, has no merits.

10. The contention of the learned counsel for the petitioners is that after returning the petition for condonation of delay and numbering the application to bring the petitioners as legal heirs of the deceased Ganesan, the learned Judge committed irregularity in dismissing the application as not maintainable on the ground that the same was not filed within 90 days, has considerable force. The learned Judge ought to have directed the Registry to number the petition to condone the delay and consider whether the reason given by the petitioners for the delay is sufficient or valid for the condonation of delay.

11. In the result, the Civil Revision Petition is allowed by setting aside the order of the learned Judge dated 22.07.2010 made in I.A.No.150 of 2010. The learned II Additional Subordinate Judge, Salem, is directed to dispose M.C.O.P.No.954 of 2005 on merits and in accordance with law, as expeditiously as possible in any event not later than three months from the date of receipt of a copy of this order. No costs.

04.08.2017

Index : Yes/No
Speaking/Non-Speaking Order
kj

V.M.VELUMANI, J.

kj

To

II Additional Subordinate Judge, Salem.



C.R.P.(NPD)No.2460 of 2011

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