

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4501 of 2011
& M.P.No.1 of 2011

1. Jayaraman
2. Kunjammal
3. Bhopathy
4. Kanagaraj

.. Petitioners

Vs.

1. N.S.Krishnaraja
2. M/s. United India Insurance Company Ltd.,
Divisional Office – 1
104-A, Peramanur Main Road,
Selam - 7

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 29.07.2011, made in I.A.No.2027 of 2011 in M.C.O.P.No.835 of 2008 on the file of the MACT cum Principal District and Sessions Judge, Salem.

For Petitioners : Mr.R.Neelakandan

For R1 : Exparte

For R2 : M/s.R.Sreevidhya

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 29.07.2011, made in I.A.No.2027 of 2011 in M.C.O.P.No.835 of 2008 on the file of the MACT cum Principal District and Sessions Judge, Salem.

2. The petitioners are the claimants, respondents are the respondents in M.C.O.P.No.835 of 2008 on the file of the Motor Accident Claims Tribunal cum Principal District and Sessions Judge, Salem. The petitioners filed the said claim petition against the respondents, claiming a sum of Rs.7,00,000/- for the death of one Prabakaran, son of the petitioners 1 and 2 and brothers of petitioners 3 and 4 in the accident that occurred on 22.02.2007 at about 2.15 a.m. The first respondent was set exparte. The second respondent is contesting the M.C.O.P. The petitioners let in evidence and their evidence was closed on 08.02.2010. The petitioners filed the present I.A.No.2027 of 2011 to reopen the case to examine the

driver of the lorry. According to the petitioners, their evidence was wrongly closed on 08.02.2010 and driver of the lorry is to be examined to prove their case. Therefore, it is necessary to reopen the case.

3. The second respondent filed counter affidavit and opposed the said application and submitted that the second respondent earlier filed an application in I.A.No.526 of 2010 for issue of summons to the driver of the lorry and Inspector of Police. The said application was allowed on 26.02.2010. The driver of the lorry informed that he could not appear due to the injury in his leg. The second respondent filed I.A.No.1430 of 2010 for contempt against the driver of the lorry. The said application was dismissed on 12.07.2010. The Inspector of Police was examined and he gave evidence and marked documents. In view of the same, prayed for dismissal of the I.A. The learned Judge, considering the averments in the affidavit and counter affidavit and the fact that earlier steps were taken to examine the driver and contempt application filed against the driver was dismissed, dismissed the application filed by the petitioners.

4. Against the said order of dismissal dated 29.07.2011, made in I.A.No.2027 of 2011 in M.C.O.P.No.835 of 2008, the present civil revision petition is filed by the petitioners.

5. Heard the learned counsel appearing for the petitioners and second respondent and perused the materials available on record.

6. From the materials on record, it is seen that in the earlier application I.A.No.526 of 2010, steps taken by the second respondent, the driver of the lorry could not appear before the Court due to the injury in his leg. The driver of the lorry did not express his unwillingness to be examined as witness. In the circumstances, the order of the learned Judge dismissing the application on the ground of earlier proceedings is not correct. The learned Judge has committed an irregularity in not considering the fact that the driver of the lorry did not appear due to injury in his leg and he did not express his unwillingness to be examined as witness.

7. Considering the above fact, Civil Revision Petition is

allowed, setting aside the order of the learned Judge. No costs. Consequently, connected miscellaneous petition is closed. Since the M.C.O.P.is of the year 2008, the learned Principal District and Sessions Judge, Salem is directed to dispose of the M.C.O.P within a period of three months from the date of receipt of a copy of this order.

17.08.2017

Index: Yes/No
gsa

To

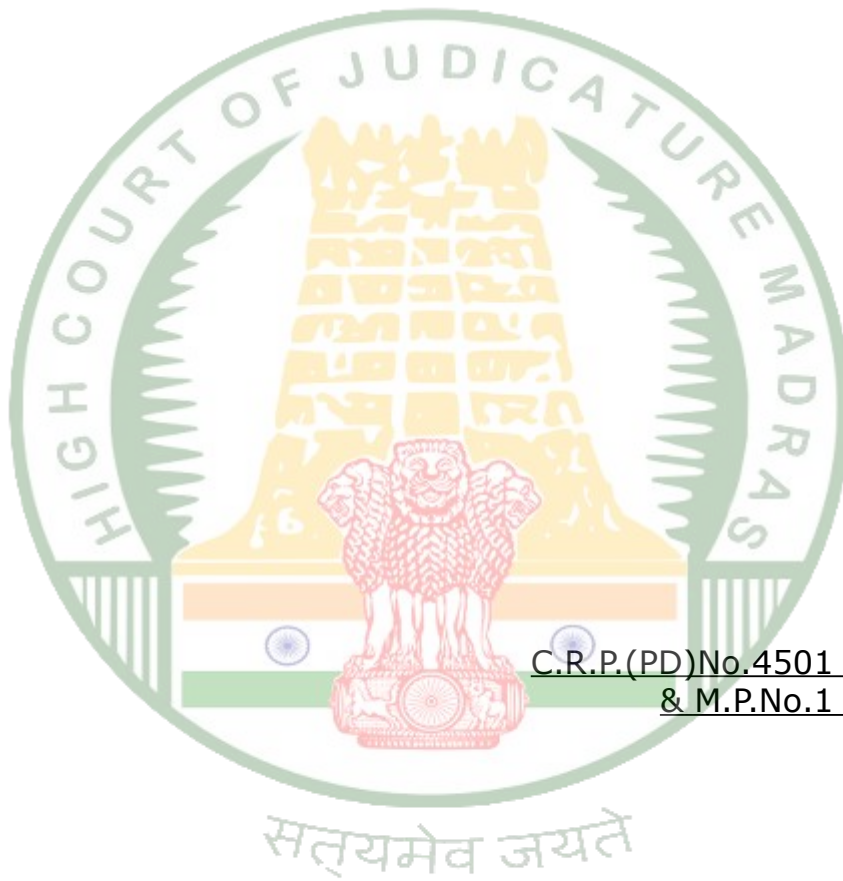
1.The United India Insurance Company Ltd.,
Divisional Office – 1
104-A, Peramanur Main Road,
Salem - 7

2. The Principal District and Sessions Judge,
Salem.

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V.M.VELUMANI, J.

gsa



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