



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:09.01.2018

Coram:

THE HONOURABLE **MRS. JUSTICE. S.RAMATHILAGAM**

C.R.P (MD) (PD)No.799 of 2011

and

M.P.(MD)No.1 of 2011

R.Malini

... Revision Petitioner/

2nd Respondent /2nd Petitioner

-Vs-

1. N.Chandraleela ... 1st Respondent/1st Respondent/1st Petitioner
2. N.Murali ... 2nd Respondent/3rd Respondent/1st Petitioner
3. N. Murali ... 3rd Respondent/4th Respondent/1st Respondent
4. The Branch Manager,
National Insurance Company Ltd.,
Pondichery. ... 4th Respondent/Petitioner/2nd Respondent

Prayer: This Civil Revision Petition is filed Under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.79 of 2010 dated 11.02.2011 in M.C.O.P.No.99 of 2007 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Pudukkottai.

For Petitioner : Mr.K.Baalasundharam
For 4th Respondent : Mr.D.Sivaraman

O R D E R

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed in I.A.No.79 of 2010 dated 11.02.2011 in M.C.O.P.No.99 of 2007, on the file of the Motor Accident Claims Tribunal (Principal District Judge), Pudukkottai.

2. The National Insurance Company Limited, who is the fourth respondent herein has filed an application in I.A.No.79 of 2010 in MCOP.No.99 of 2007, to receive additional counter and that was allowed by the Motor Accident Claims Tribunal (Principal District Judge), Pudukkottai. Aggrieved against that order, the Civil Revision Petition has been preferred by the petitioner.

3. The argument of the petitioner is that the fourth respondent / Insurance Company, cannot file such an application when already he has made objections in all aspects in the counter that is filed at the first instance. Hence, the application has to be dismissed.



immediately within the reasonable time in MCOP.No.99 of 2007, in paragraph no. 3 they have stated that "The respondent's private investigation bureau not yet submitted their report. So this respondent is unable to plead elaborately. This respondent reserves the right to file additional counter, when the full particulars are available to them". He further argued that in the following paragraphs in the said counter, the Insurance of the first respondent's car and the valid license of the driver are all denied by the fourth respondent. Further, in the additional counter in paragraph no.3, the fourth respondent / Insurance Company has clearly stated that as per the terms and conditions of Policy, a person dying in the occurrence on account of accident to the insured vehicle, for the death of a person who travelled in the vehicle, a sum of Rs.2,00,000/- only is payable by the Insurer. Since in this claim petition, the deceased happens to be the father of the third petitioner / owner of the car, the fourth respondent, Insurance company is liable to pay only a sum of Rs.2,00,000/-. It is also stated in paragraph No. 4 that the claimants have laid the claim in the petition as though the death was caused to third party by the vehicle. These facts are very much necessary for fixing the liability on the Insurance Company as well as the claim of the petitioner before the Tribunal.

5. Though the petitioner has argued that since the claim application comes under the summary procedure, the fourth respondent / Insurance Company cannot file such an application under order 8 Rule 9 of CPC, by way of filing additional counter by giving new facts before the Tribunal, for which he is not entitled. In support of his contention he has relied on the Judgment reported in **2010-5-LW-499 (Bimlesh and others Vs. New India Assurance Company Limited)**.

6. Hence, by filing an additional counter before the Tribunal, the fourth respondent / Insurance company has not made any new facts or any created facts before the Tribunal, what is stated in the additional counter is very much necessary for the proper disposal of the claim petition that has been filed by the petitioner herein.

7. It is also perused that the claim petition was filed in the year 2007 and the counter was filed by the respondent / Insurance company immediately and the additional counter also filed in the said claim petition. The original counter was filed in the year 2007 and the application to receive additional counter was filed in the year 2010 and the Tribunal has heard both sides and considering the facts that has been laid in the additional counter, has allowed the application.

<https://hcservices.ecourts.gov.in/hcservices/> 8. The policy was not issued by the Divisional Office, Since the fourth respondent has to collect the particulars from



the branch office regarding the policy details it took time for furnishing those details before the Tribunal and whatever the objections that the petitioner can make with regard to the additional facts, that is stated in the additional counter. The petitioner / claimant must be given an ample opportunity to verify the details by let in evidence by allowing this revision.

9. The revision petitioner is no way prejudice and further the additional counter contains the facts regarding the coverage of the insurance company, which is very much essential to fix the liability of the insurance company. Since the M.C.O.P is of the year 2007, if this petition is kept pending by putting up a hurdle by not allowing the petition, only then claimant will be put to lot of inconvenience by delay of the proceedings. Hence, I am of the view that the claimant has to be given the relief at the earliest and the petitioner is also given an opportunity to verify the facts that is mentioned in the additional counter.

10. In the result, the Civil Revision Petition is allowed setting aside the order dated 11.02.2011 made in I.A.No.79 of 2010 in MCOP.No.79 of 2010, passed by the Motor Accident Claims Tribunal (Principal District Judge), Pudukkottai. No costs. Consequently, connected miscellaneous petition is closed.

11. Since the MCOP is of the year 2007, the Tribunal is directed to dispose the claim petition in MCOP.No.99 of 2007 within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
Motor Accident Claims Tribunal,
Pudukkottai.

+1cc to Mr.D.Sivaraman, Advocate Sr.No.41369

DAS/TRP

VB/KKR/SAR1/02.02.2018/3P/3C

C.R.P (MD) (PD) No.799 of 2011
and
M.P. (MD) No.1 of 2011
09.01.2018