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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.02.2019

DELIVERED ON : 03.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No.844 of 2015

and

M.P.No.2 of 2015

- 1.Shanthi
- 2.Shenbagavalli
- 3.Minor Kumaresan

Represented by his mother Shanthi .. Petitioners /
Respondents 3 to 5/ Respondents 3 to 5

Vs.

- 1.Amutha
- 2.Minor Vijaya Sankar

...Respondent/Petitioner/
Petitioner

(Rep by through his mother and guardian Amutha)

- 3.S.Prabakaran
- 4.The New India Assurance Company Ltd.,
Salai Street,
Ramanathapuram District.

.. Respondents/Respondents 1&2/
Respondents 1&2

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.101 of 2015 in M.C.O.P.No.281 of 2003 on the file of the Additional District Judge-Fast Track Court, (Motor Accident Claims Tribunal), Ramanathapuram dated 25.03.2015.

For Petitioners	: Mr.S.Ramesh
For Respondents 1 and 2	: Mr.D.Senthil
For 3 rd Respondent	: No Appearance
For 4 th Respondent	: Mr.J.S.Murali

ORDER

Heard Mr.S.Ramesh, learned counsel appearing for the petitioners, Mr.D.Senthil, learned counsel appearing for the respondents 1 and 2 and Mr.J.S.Murali, learned counsel appearing for the 4th respondent.



2.This Civil Revision Petition has been filed against the order passed in I.A.No.101 of 2015 in M.C.O.P.No.281 of 2003 dated 25.03.2015 on the file of the Additional District Judge-Fast Track Court, (Motor Accident Claims Tribunal), Ramanathapuram.

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3.The petitioners herein are the respondents 3 to 5, the first respondent herein is the petitioner and the respondents 3 and 4 herein are the respondents 1 and 2 in the claim petition.

4.On the side of the petitioners, it is stated that the respondents 1 and 2 have filed M.C.O.P.No.281 of 2003 and that the first petitioner herein was mentioned as the wife of one Karuppiyah and that the petitioners 2 and 3 are stated as the daughter and son of the first petitioner and the petitioners are claiming compensation for the death of one Karuppiyah. In that petition, the learned Additional District Judge, Fast Track Court, Ramanathapuram has awarded a sum of Rs.4,00,000/- (Rupees Four Lakhs only) to the respondents 1 and 2 without giving any apportionment to the petitioners herein.

5.The petitioners filed a C.M.A.(MD)Nos.1298 of 2009 and 462 of 2012 against the award passed by the trial Court before this Court and this Court has remitted back the matter to the trial Court giving an opportunity for the petitioners to file additional documents and has directed the trial Judge to decide the apportionment on the basis of relevant documents to be filed or on the basis of the document available on record. The trial Court has re-considered the matter and came to a finding that since the petitioners have failed to produce the legal heir Certificate and the School Certificate, they are not entitled for any share and gave a findings on 26.03.2015. The cheque petition was filed by the respondents 1 and 2 and the same was allowed by the trial Court and the respondents 1 and 2 has filed a petition in I.A.No.101 of 2015 to send for the amount deposited by the second respondent from the Bank to this Court and the same was allowed by the trial Court. Against that order, the petitioners have come forward with this revision petition.

6.On the side of the petitioners, it is further stated that the petitioners have filed Exs.B1 to B10 and that even illegitimate children are allowed to succeed the asset of a deceased and that there is no necessity for a person to be a legal heir to claim apportionment in the compensation and that it is sufficient to prove that the particular person is a dependent of the deceased. It is further stated that the first respondent herself has admitted that the first petitioner is the wife of the deceased Karuppiyah and that an admitted fact need not be proved
<https://hcservices.hcourt.gov.in/hcservices/>
the relationship of husband and wife was admitted by the first respondent and that even if the relationship between the first petitioner and the deceased Karuppiyah is not proved as



dependants, the petitioners are entitled for a share in the compensation.

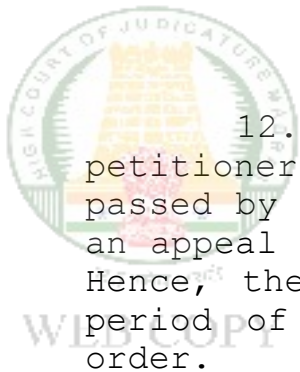
7. In support of his contention, the Judgment passed by the Kerala High Court in the case of **Jane Antony v. Siyath** reported in **2008 SCC Online Ker 503** is cited.

8. On the side of the respondents, it is stated that impugned order is only a send for petition and that the husband of the first respondent died on 19.08.2003 and the first petitioner is claiming as the wife of the deceased and that the petitioners 1 and 2 have filed a suit in O.S.No.36 of 2004 before the learned District Munsif, Kovilpatti and that suit was dismissed. In the appeal filed against the claim petition in M.C.O.P.No.281 of 2003, this Court has directed the petitioners to produce the documents within a period of three months but the petitioners have failed to produced any documents and that the trial Court heard the matter and gave a finding that the petitioners are not the legal heirs of the deceased Karuppiyah. When the claim petition itself is not questioned, there is no grounds to be raised in the send for petition and prayed the petition is to be dismissed.

9. On the side of the petitioners, it is stated that the petitioners have already filed Exs.B1 to B10 to prove that the petitioners are the dependends of the deceased.

10. It is seen that the first petitioner has deposed that she is not aware of the year, month and date of her marriage and the date of birth of the second petitioner. She has also deposed that the father's name of the third petitioner is Nagarajan and the mother's name is Pappa and the mother of the third petitioner is her niece and since the third petitioner is residing in the same house, his name is included in the ration card and that the lower Court has given a findings that since the petitioners are not the legal heirs they are not entitled for apportionment of the compensation.

11. A perusal of the records reveals that the petitioner herein have filed ration cards for the year 2005-2009 and 1998-2003, voter list, property tax receipt, house tax receipt, Voter I.D., E.B card, a copy of W.P.No.622 of 2004 and a family photograph. It is seen that the petitioners 1 and 2 were residing with the deceased Karuppiyah. While deciding the issue of apportionment of compensation, the Tribunal has to decide dependency and not the status of the parties as legal representative. By adding the petitioners as respondents in M.C.O.P. Case, the respondents 1 and 2 have admitted that the first petitioner is the wife of Karuppiyah and that the petitioners 1 and 2 are the dependends of deceased Karuppiyah.



12. In the above circumstances, an opportunity for the petitioner has to be given to file an appeal against the order passed by the trial Court dated 26.03.2015. The purpose for filing an appeal will fail if the cheques were issued to the respondents. Hence, the petitioners are permitted to file an appeal within a period of one month from the date of receipt of copy of this order.

13. For the above reasons, this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.101 of 2015 in M.C.O.P.No.281 of 2003 dated 25.03.2015 on the file of the Additional District Judge-Fast Track Court, (Motor Accident Claims Tribunal), Ramanathapuram. No Costs. Consequently, M.P.No.2 of 2015 is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

The learned Additional District Judge-Fast Track Court, (Motor Accident Claims Tribunal), Ramanathapuram.

+1 CC to M/s.D.SENTHIL, Advocate (SR-58766[F] dated 04/04/2019)

+1 CC to M/s.J.S.MURALI, Advocate (SR-58835[F] dated 04/04/2019)

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-58973[F] dated 04/04/2019)

mrn

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