

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.09.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

Tr. C.M.P. No.435 of 2020
and C.M.P. No.9289 of 2020

The New India Assurance Co. Ltd.,
No.232, N.S.C.Bose Road,
Bombay Mutual Building,
6th Floor, Broadway,
Chennai – 600 001
Branch Office at Thiruvallur. ... Petitioner

-VS-

1.Vasantha Devi
2.Parveen Travels P. Ltd.,
AB Towers, No.148,
Perambur Barracks Road,
Purasavakkam,
Chennai-600 007. ... Respondents

Prayer: Petition filed under Section 24 of C.P.C to withdraw and transfer the M.C.O.P. No.100 of 2017 pending before the Special Court-1, MACT, Thiruvallur and transfer the same to the file of III Court of Small Causes, Chennai for being tried along with M.C.O.P. No.4625 of 2017 and M.C.O.P. No.5358 of 2017 jointly.

For Petitioner : Mr.S.Dhakshnamoorthy

For Respondents : Ms.A.Subadra for R1

No appearance for R2

ORDER

The Transfer C.M.P. has been filed by New India Assurance Co. Ltd. seeking transfer of the M.C.O.P. No.100 of 2017 pending before the Special Court-1, MACT, Thiruvallur to the file of the III Court of Small Causes, Chennai for being tried along with M.C.O.P. Nos.4625 and 5358 of 2017.

2.Learned counsel appearing for the petitioner Insurance Company would submit that the first respondent filed the M.C.O.P. No.100 of 2017 claiming compensation of Rs.45,00,000/- for the death of her son, who has died in the road accident that has occurred on 27.06.2017 at about 23.20 hours, while the deceased was riding the two wheeler bearing Registration No.TN-22-BZ-9928 and was hit by the insured bus bearing Registration No.AP-35-V-2233. That apart, the claimant has also filed two claim petitions in M.C.O.P. Nos.4625 & 5358 of 2017 before the III Court of Small Causes, Chennai for the same cause of action. Learned counsel appearing for the Insurance Company would further submit that the claim

petitions seeking compensation filed by the first respondent for the same cause of action, shows that the claimant has not come to the Court with clean hands and therefore, the claimant should be denied any relief so that there will not be any multiplicity of proceedings. Secondly, the claimant should also be penalised for not repeating the same manipulation in her life time.

3.Detailed written arguments along with the typed set of papers have been filed by the first respondent.

4.Learned counsel appearing for the first respondent submitted that M.C.O.P. Nos.4625 & 5358 of 2017 were filed before the III Court of Small Causes, Chennai by two different counsel and therefore, she do not have any knowledge of the filing of repeated claim. Reiterating the averments made in para 6 of the written arguments filed by the first respondent, learned counsel appearing for the first respondent requested this Court to dispose of the above petitions, which are pending before the III Court of Small Causes, Chennai, as the counsel for the petitioner in M.C.O.P. Nos.4625 and 5358 of 2017 have filed memo for withdrawing the above petitions.

5. In this regard, it is relevant to extract paragraph 6 of the written arguments filed on behalf of the first respondent as under:

'6. The 1st respondent submits that for easy reference and in the interest of justice and convenience, the relevant portion of Section 24 of Civil Procedure Code, 1908 has been extracted here under:

24. General power of transfer and withdrawal – (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) re-transfer the same for trial or disposal to any Court from which it was withdrawn.

From the above provision (ie) Section 24 (1)(b)(i) of Code of Civil Procedure, 1908, it is clear that this Hon'ble Court withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and try or dispose of the same. Thus this Hon'ble Court may withdraw the MCOP Nos.4625/2017 and 5358/2017 pending before III Court of Small Causes Chennai and dispose the same, as the counsels for the petitioner in the respective MCOP Nos.4625/2017 and 5358/2017 have filed memo for withdrawing the petitions.'

6.Since the learned counsel for the first respondent would submit that unfortunately the first respondent has filed M.C.O.P. Nos.4625 and 5358 of 2017 for the same cause of action before the III Court of Small Causes, Chennai and in paragraph 6 of the written arguments filed on behalf of the first respondent it has been stated that counsel for the petitioner in M.C.O.P. Nos.4625 and 5358 of 2017 have filed memo for withdrawing the above petitions, this Court is of the view that the above petitions are liable to be dismissed and M.C.O.P. Nos.4625 and 5358 of 2017 are dismissed as not maintainable.

T.RAJA,J.

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7.As the above M.C.O.P. Nos.4625 and 5358 of 2017 are filed by the first respondent for the repeated claim, this Court is inclined to impose costs of Rs.5,000/- each to the first respondent. Accordingly, the first respondent is directed to pay Rs.10,000/- to the New India Assurance Company within a period of two weeks from today. On receipt of the payment from the first respondent, the Special Court-1, MACT, Thiruvallur is directed to take up only the M.C.O.P. No.100 of 2017 and dispose of the matter in accordance with law expeditiously. Accordingly, the Tr. C.M.P. is disposed of. No costs. Consequently, C.M.P. No.9289 of 2020 is closed.

30.09.2020

Index : Yes/No

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To

1.The Special Court-1, MACT,
Thiruvallur.

2.The III Court of Small Causes,
Chennai.

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