



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.03.2020

CORAM

THE HONOURABLE Mrs. JUSTICE R.THARANI

C.R.P (PD) (MD) No.2315 of 2013

and

M.P(MD) No.2 of 2013

1.Perumal Samy

2.Mookammal Petitioners / Petitioner / Revision Petition

-Vs-

1.Subash Chandrabose

2.National Insurance Company Ltd.,
Hero Honda Vertical,
No.101, 106, BMC House,
NI.Connaught Place,
New Delhi-110001. ... Respondents / Respondents / Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India, against I.A.No.605 of 2013 in MCOP No.189 of 2013 on the file of MACT/the First Additional District Judge, Tuticorin.

For Petitioners : Mr.S.Siva Thilakar

For R-1 : No appearance

For R-2 : Mr.J.S.Murali

ORDER

This Civil Revision Petition is filed against the order in I.A.No.605 of 2013 in MCOP No.189 of 2013 on the file of Motor Vehicle Accident Claims Tribunal / the First Additional District Judge, Tuticorin.

2.The petitioners are claimant. They have filed a petition in M.C.O.P.No.189 of 2013 before the Motor Vehicle Accident Claims Tribunal / the First Additional District Judge, Tuticorin. In that petition, the petitioners filed an application in I.A.No.605 of 2013



seeking permission to amend the pleadings and that petition was dismissed by the Tribunal. Against which, the petitioners preferred this civil revision petition.

3.The brief facts of the petition in I.A.No.605 of 2013 is as follows;-

The son of the petitioners died due to the motor vehicle accident. The petitioners filed a claim petition under Section 163 (A) of Motor Vehicles Act but the petitioners wrongly calculated the loss of income under Section 166 of Motor Vehicles Act. Hence, the petition has to be amended. Unless the petition is amended, the petitioners will be put into serious hardship.

4.The brief substance of the counter filed by the second respondent is reads as follows:-

The original petition was filed under Section 163(A) of the Motor Vehicles Act. The second respondent filed a detailed counter and proof affidavit of the first petitioner was filed on 25.09.2013. Four documents were marked. Even in the proof affidavit, it was stated that the son of the petitioners was working in Sterlite Company and at his leisure time, he was working as a Taxi Driver and he was earning Rs.15,000/- per month. In the above circumstances, there is no necessity to reduce the monthly income from Rs.15,000/- into Rs.3,300/-. The petition is only maintainable under Section 163(A).

5.In the First Information Report, the brother of the deceased has mentioned that his brother was working in the Sterlite Company as a labourer. Both in the main petition and in the proof affidavit, the claim amount is Rs.30,00,000/- (Rupees Thirty Lakhs only). The respondent cross examined the first petitioner on 25.09.2013 and the case was posted for examination of other witnesses. The petitioners have not taken any steps to amend the petition before commencement of the trial. The petitioners cannot set right the admission made in the pleading and prayed the petition to be dismissed.

6.After considering both side, the trial Court has dismissed the petition. Against which, the petitioners preferred this revision petition.

7.On the side of the petitioners, it is stated that no prejudice will be caused to the respondents in permitting the amendment. The petitioners were wrongly guided by an advocate and the petitioners should not be prejudiced, due to the fault of that advocate.



8. On the side of the petitioners, it is further stated that the amendment is permissible and the petitioners may be permitted to amend the Section from 163 (A) to 166 of the Motor Vehicles Act. The learned counsel for the petitioners would rely upon the judgment of the High Court of Allahabad in the case of **Richa Khare and others v. Ankit Gupta and others** published in **2016(1) TN MAC 532 (All.)**, wherein it is stated as follows:

"Amendment of Pleadings-Permissibility-Amendment Application filed on ground that Claim Petition filed under Section 163-A instead of Section 166 due to clerical mistake- Amendment sought in respect of Section under which Claim Petition filed - However, Application seeking amendment rejected by Tribunal for filing same at belated stage- Tribunal also taken view that Claimant opted to move Claim Petition under Section 163-A and proceedings under Section 163-A being of final nature cannot be converted- Legality- Pleading taken in Claim Petition showing necessary ingredient for Application under Section 166 - No amendment of pleadings sought except amendment of Section- No question of change of nature of case."

9. On the side of the petitioners, it is stated that if the amendment will not alter the cause of action and if the matter will not prejudice the respondent, such amendment can be allowed. The learned counsel for the petitioners would rely upon the judgment of the Hon'ble Supreme Court in the case of **Rameshkumar Agarwal Vs Rajmala Exports Pvt. Ltd. & Ors.** published in **2012(2) MWN (Civil) 219**, wherein it is stated as follows:

"13. By the present amendment, the Plaintiff furnished more details about the mode of payment of consideration. Accordingly, we hold that there is no inconsistency and the amendment sought for is not barred by limitation. We fully agree with the conclusion arrived at by the learned Single Judge and the Division Bench of the High Court."

10. The learned counsel for the petitioners would rely upon the judgment of the Hon'ble Supreme Court in the case of **State of Madhya Pradesh v. Union of India and another** published in **(2011) 12 Supreme Court Cases 268**, wherein it is stated as follows:

"However, amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach-Liberal approach should be the general rule, particularly in cases where other side can be compensated with costs- Normally,



amendments are allowed in pleadings to avoid multiplicity of litigations - Further held, where application is filed after commencement of trial, it must be shown that in spite of due diligence, such amendment could not have been sought earlier."

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11.The learned counsel for the petitioners would rely upon the judgment of the Hon'ble Supreme Court in the case of **Abdul Rehman and another v. Mohd. Ruldu and others** reported in **2012 (5) CTC 803**, wherein it is stated as follows:

"Relief sought to be added would not change nature of suit but would only protect interest of Plaintiffs- Adding of relief would avoid multiplicity of litigation- Held, change in nature of relief ought not to be considered as change in nature of suit and power of amendment to be exercised in larger interests of doing full and complete justice between parties - Order of Trial Court and High Court dismissing Application for amendment, set aside - Appeal allowed."

12.On the side of the second respondent, it is stated that the main claim itself is not maintainable both under Section 166 of Motor Vehicles Act and under Section 163(A) of Motor Vehicle Act. It is stated that under Section 163(A) of the Motor Vehicle Act, the negligence is on the part of the deceased. The claim of the petitioners is that some unknown vehicle was driven by its driver in a rash and negligence manner and hit against the motor vehicle driven by the deceased. The First Information Report was filed only against the driver of the unknown vehicle and not against the deceased. Under Section 166 of the Motor Vehicle Act, the claimant has to prove that the accident was due to the rash and negligence of the offending vehicle driver. The facts of this case is different from the facts of the case cited by the petitioners. The driver of the offending vehicle was not traced out. The second respondent is the insurer of the deceased vehicles. Even if the amendment is allowed, the claim petition is not maintainable. Only course available to the claimants is to approach the Government and to receive fund to be granted by the Government solecism scheme.

13.On the side of the revision petitioners, it is stated that an opportunity for the petitioners to put forth their case has been to be given and the trial court would decide whether the petition is maintainable or not and the trial Court can consider whether the respondents are entitled to get compensation from the respondents and prayed the petition to be allowed.

14.In the First Information Report, it is stated that the accident was due to the driver of the unknown vehicle. The case of the respondent is that the amending the Section from 163(A) to 166



of the Motor Vehicles Act is not applicable to the present case. The trial Court can decide whether the respondents are liable to pay compensation. The respondents are at liberty to raise the points before the Tribunal. It is left for the trial Court to decide whether the respondents are liable to pay compensation. The petitioners lost the bread winner of the family. A lenient view has to be given to the beneficiary under the Motor Vehicle Act. Though this petition was filed after the commencement of the trial, an opportunity for the petitioners to put forth their case has to be given in the interest of justice.

15. In the above circumstances, this Civil Revision Petition is allowed by giving an opportunity for the petitioners to amend the pleadings of the main claim petition. Sufficient opportunity for the respondents to file an additional counter has to be given. Hence, the order passed in I.A.No.605 of 2013 in MCOP No.189 of 2013 on the file of Motor Vehicle Accident Claims Tribunal / the First Additional District Judge, Tuticorin is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The First Additional District Judge/
Motor Vehicle Accident Claims
Tribunal,
Tuticorin.

+1 cc to Mr.J.S.Murali ,Advocate, SR No.9811

C.R.P (MD) No.2315 of 2013

02.03.2020

cp

SDS (03.07.2020) 5P-3C