



C.M.A.No.3148 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.04.2022

Pronounced on : 24.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.3148 of 2011
and M.P.No.1 of 2011

The New India Assurance Co.Ltd.,
Branch Manager, 289,
Shaheed Bhagat Singh Road,
Fort Market, Mumbai

..Appellant/2nd respondent

Vs.

1.Muthusamy

2.Chinnammal

3.Ramsingh

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree made in M.C.O.P.No.679 of 2004 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Namakkal dated 03.01.2011.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : R1 and R2 -not ready in notice
R2- Ex parte vide in EB



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J U D G M E N T

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This Civil Miscellaneous Appeal has been filed by the Insurance Company, against the Judgment and decree made in M.C.O.P.No.679 of 2004 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Namakkal dated 03.01.2011 .

2. Mr.M.Krishnamoorthy, learned counsel appeared on behalf of the appellant/insurance company. Though this court ordered notice by order dated 30.09.2011, it has not been served on the respondent Nos.1 and 2. R3 was set exparte before the tribunal.

3. Earlier when the matter was taken up for hearing on 16.07.2020, 06.08.2020, 15.12.2020, 09.02.2022, 02.03.2022, this Court has directed the learned counsel for the appellant-Insurance Company to serve notice on the respondents. Thereafter, the matter stood adjourned to 16.03.2022, 30.03.2022 and 20.04.2022.



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4. When the matter was taken up for hearing on 20.04.2022, the learned counsel for the appellant submitted that the address of the respondents 1 and 2 was not clear and later it was found that there was no such person residing in the said address in the name of the respondents/claimants. Moreover, different version has been stated in the petition and evidence about the death of Murugesan, who was injured in the accident on 29.06.2000 and subsequently died on 03.11.2000. Further, death certificate of the deceased has also not been produced. Hence, he prays to allow this Civil Miscellaneous Appeal.

5. On 30.03.2022, this Court directed the Registry to call for the Report from the learned Principal District Judge, Namakkal in respect of M.C.O.P.No.679 of 2004 and also the entire details of the counsel who filed the claim petition on behalf of the claimants and directed to produce the same before this Court on or before 19.04.2022.

6. As per the direction of this Court dated 30.03.2022, learned Principal District Judge, Namakkal has sent a Report dated 18.04.2022. The said Report dated 18.04.2022 is extracted hereunder:



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“ MCOP No.679/2004 was originally filed before the Sub Court, Namakkal as MCOP No.1155 of 2001 on 06.11.2001 by Thiru. P.Rajkumar, Advocate, Namakkal on behalf of the claimants viz., Muthusamy and Chinnammal against 1.M.Ramsingh and 2) New India Insurance Company Limited, Mumbai to award compensation to the death caused to their son Murugesan in an accident and the same was received by transfer to the Principal District Court, Namakkal and taken on file and renumbered as MCOP No.679 of 2004. The vakalat of 1.Mr.P.Rajkumar, 2.Mr.P.Rajaraman, 3.Mr.K.Arasu, Advocates, 1 A-6, Trichy Main Road, Namakkal is found affixed. He further stated that the MCOP NO.679/2004 was dismissed for default on 28.03.2005 and Sec.5 of Limitation Act petition along with Or.9 R.9 CPC was filed on 07.11.2005, the same was allowed on 18.09.2009. Subsequently, MCOP NO.679/2004 was restored and the same was disposed after full trial on 03.01.2011. Aggrieved against the said order, the Insurance Company had preferred this appeal in CMA No.3148 of 2011. He further added that the address of the claimants have been mentioned as 1.Muthusamy, S/o.Rasigounder, **Poondipalayam**, Andapuram and Post, Namakkal Taluk and District. 2. Chinnammal w/o. R.Muthusamy, **Poondipalayam**, Andapuram and Post, Namakkal Taluk and District in the copy of decretal order, whereas, in the petition filed under Sec.5 of



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Limitation Act petition and Or.9 R.9 CPC, the address of the claimants have been mentioned as Namakkal Taluk and District, Andapuram and Post, **Pandipalayam**, Muthusamy, S/o.Rasigounder-1 and Chinnammal w/o. R.Muthusamy.-2”.

7. This Court has perused the entire materials available on record.

8. From the report of the learned Principal District Judge, Namakkal, it is crystal clear that the matter has been adjudicated properly and the parties have appeared and the matter has been disposed of after full trial. The learned counsel appearing for the appellant/Insurance Company had never taken steps to serve notice either to the parties or to the counsel. Even though the appellant counsel was present before this Court for the past few hearings, the matter was continuously adjourned to serve notice on the respondents to the correct address, however, no proper efforts were taken to serve notice on the respondents/claimants who were granted compensation to the tune of Rs.3,25,000/- vide award dated 03.01.2011 for the death of their only son as a result of the accident took place on 29.06.2000. This Civil Miscellaneous Appeal has been filed in the year 2011, but, it is very unfortunate that the matter is pending without service to the respondents. Even on



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merits, this court do not find reasons to interfere with the well considered award.

Accordingly, the Civil Miscellaneous Appeal is dismissed. Consequently connected miscellaneous petition is closed. No Costs.

24.06.2022

Index : Yes / No

Speaking Order : Yes/No

msv/nvsri

To

1.The Principal District Judge,
Motor Accident Claims Tribunal
Namakkal

2.The Record Keeper,
V.R.Section, High Court, Chennai.



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J.NISHA BANU,J.

msv

Pre-Delivery Judgment in
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24.06.2022