



C.R.P.No.1069 of 2020
and C.M.P.No.5831 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

CORAM :

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1069 of 2020

and

C.M.P.No.5831 of 2020

1.Swetha

2.Madhavan Unnithan

3.Prasanna Unnithan

4.Vimal Unnithan

... Petitioners

Vs.

1.M/s.Aruna Associates,

No.5, Balavarayan Kulakarai Street,

Somangalam, Chennai - 602 101.

(Since the first respondent remained ex parte before the Tribunal his presence may be dispense with)

2.M/s.Balaji Alliance General Insurance Company Ltd.,

GE Plaza, Airport Road,

Yerawada, Pune - 411 006.

Rep. by its General Manager

Local branch office at :

M/s.Balaji Alliance General Insurance Company Ltd.,

No.25/26, Prince Towers, VI Floor,

Opp. to Metrological Office, College Road,

Nungambakkam, Chennai - 34.

Represented by its General Manager

... Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 02.07.2019 in M.P.No.811 of 2019 in MCOP.No.4080 of 2012 on the file of the Motor Accident Claims Tribunal, Chennai (II Court of Small Causes, Chennai).

For Petitioners : Ms.A.Subadra
For R2 : Mr.J.Michael Visuvasam
R1 : Ex parte

ORDER

The present petition has been filed against the fair and decreetal orders dated 02.07.2019 in M.P.No.811 of 2019 in MCOP.No.4080 of 2012 on the file of the Motor Accident Claims Tribunal, Chennai (II Court of Small Causes, Chennai).

2.The revision petitioners are the petitioners in MCOP.No.4080 of 2012 on the file of the Motor Accident Claims Tribunal, (II Court of Small Causes, Chennai). The petitioners filed the claim petition seeking compensation of Rs.39,65,000/- together with interest at the rate of 7.5% per annum against the respondents 1 & 2 for the death of one Anil Unnithan in a road accident that took place on 01.08.2010 at Kathipara

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bridge on Tambaram - Ikkatuthangal Road, Chennai.

3. The first respondent remained absent before the Tribunal and the second respondent filed a counter on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act. One witness was examined on the side of the petitioners and when the matter was posted for further examination of witnesses, the petitioners filed an application under Order VI Rule 17 CPC to amend the claim petition. The respondent filed a counter and after full contest, the learned II Judge, Small Causes Court, Chennai, dismissed the application vide her orders dated 02.07.2019.

4. Heard Ms.A.Subadra, learned counsel appearing for the revision petitioners and Mr.J.Michael Visuvasam, learned counsel appearing for R2.

5. The main contention of the revision petitioners is that since the manner of accident was omitted to be mentioned by their erstwhile



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advocate, the same has to be included in the pleadings. The amendment sought to be made in the claim petition is extracted hereunder :

"For the reasons stated in the accompanying affidavit it is therefore prayed that this Hon'ble Court may be pleased to permit the petitioners to amend the manner of the accident stated in paragraph No.2 of Column No.23 (a) of the claim petition as on 01.08.2010 at about 08.30 P.M. while the deceased was riding in a motorcycle bearing Registration No.TN-21-M-8476 at Kathipara flyover, opposite to Geological Research Centre, proceeding from Pallavaram towards Koyambedu, at that time a Mini lorry bearing Registration No.TN 22-BH-6064, which came from opposite direction i.e., Koyambedu to Pallavaram, in a rash and negligent manner endangering public safety without any headlight or parking light or any other light or indication and ran over the centre median, which was a small elevation of about one feet, and dashed against the deceased's Motorcycle. Due to the said accident, the rider of the motorcycle died on the spot. At the time of accident the fly over was under construction, the centre median and side walls were not completed. Further there is no indication or warning or reflector or any other safety measurement by the National Highways Authority of India. The



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driver of the 1st respondent's vehicle was solely responsible for the accident instead of that on 01.08.2010 at about 08.30 P.M. on the Kathipara Bridge opposite to the Geological Research Center near Guindy in between Tambaram - Ekkadthangal the medium goods vehicle bearing registration No. TN-22-BH-6064 belongs to the 1st respondent was driven by its driver in the course of his employment under the 1st respondent in a very rash and negligent manner towards Tamabaram from Ekkaduthangal and dashed against the said deceased Anil Unnithan. Due to the impact the said Anil Unnithan died on the spot. After the accident the body of the said deceased was taken to the Tambaram Government Hospital and post-mortem was conducted on the body on 02.08.2010 in the claim petition and thus render justice."

6. The learned II Judge, Court of Small Causes, Chennai in her orders has observed that allowing the above amendment would amount to "introduce false fact" in the claim petition and it would also cause prejudice and injustice to the parties concerned.



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7. It is pertinent to point out that the claim petition has been filed under Section 166 of the Motor Vehicles Act, 1988 and therefore, the petitioners are expected to prove the negligence on the part of the driver of the offending vehicle by adducing acceptable evidence. In the original claim petition the manner of accident has not been elaborated. It is settled law that normally amendment of pleadings should be allowed unless it causes injustice to the other side or it is not necessary for the purpose of determining the real issue between the parties. In the instant case, as already observed, the petitioners have to prove the negligence aspect on the part of the first respondent herein since the claim petition has been filed under Section 166 of the Motor Vehicles Act. The Tribunal seems to have been carried away by the contents of the FIR wherein negligence was fixed on the deceased Anil Unnithan. It is to be borne in mind that Motor Vehicles Act is a beneficial legislation and the parties are expected to prove their case based on preponderance of probabilities. It is also pertinent to point out that the petitioners have not examined the eyewitnesses so far. By allowing the amendment petition no prejudice would be caused to the contesting respondent as the burden of



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proof lies on the petitioners to prove the negligence on the part of the driver of the first respondent by adducing acceptable oral and documentary evidence. The trial Court has erroneously concluded that the amendment sought to be introduced now is a false statement and the same cannot be sustained. Hence the Civil Revision Petition is liable to be allowed.

8. In the result,

- i. the Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.
- ii. the fair and decreetal orders dated 02.07.2019 passed in M.P.No.811 of 2019 in MCOP.No.4080 of 2012 on the file of the Motor Accident Claims Tribunal, Chennai (II Court of Small Causes, Chennai), is set aside.
- iii. The Tribunal is directed to proceed further with the MCOP after



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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

- 1.The Motor Accident Claims Tribunal
(II Judge, Court of Small Causes, Chennai).
- 2.The Section Officer, VR Section, High Court, Madras.

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