



C.M.A(MD)No.144 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 29.07.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.144 of 2012

- 1.Selvi @ Selvalakshmi
- 2.Minor.G.Suguna Prakash
- 3.Minor.Parthasarathi
- 4.Chokkalinga Thevar

Minors appellants 2 and 3 are
represented by their mother and guardian
the 1st appellant

... Appellants

Vs

- 1.G.Mogbook Ahmed
- 2.The National Insurance Co. Ltd.,
Branch Office P.B.210,
No.371/A-3rd Floor, Mysore-570 024.

... Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to enhance the award to Rs.1,00,000/- as claimed in M.C.O.P.No.178 of 1999 on the file of Motor Accident Claims Tribunal (Subordinate Judge), Kovilpatti and fix the liability on the respondents 1 and 2 jointly and severally and allow this CMA.

For Appellants : No appearance

For R2 : Mr.J.S.Murali



C.M.A(MD)No.144 of 2012

WEB COPY

JUDGMENT

The appellants failed to pay batta for the first respondent on 29.01.2019 and the matter was taken up and a specific order was made stating that 'if the defects pointed out by the office is not complied within 13.02.2019, the appeal shall stand automatically dismissed insofar as the respondents against whom batta is not paid'.

2. On 13.02.2019, Registry has made an endorsement stating that batta was not paid for the first respondent and the case against the first respondent was dismissed as per the order dated 29.01.2019. The matter was taken up for hearing on 21.06.2022. On verification of the case, this Court, came to know that the case against R1 was dismissed for default as per the order of this Court dated 29.01.2019. The first respondent is the owner of the vehicle. Unless the first respondent is made as a party, the appellants cannot claim enhancement from the insurance company alone. The matter was adjourned to 08.07.2022 for explanation regarding the maintainability of the appeal against the second respondent. Again the matter was adjourned to 15.07.2022 and 21.07.2022. The learned counsel for the appellant has not taken any steps



C.M.A(MD)No.144 of 2012

to restore the case as against the first respondent. Thereafter, the matter was adjourned to 29.07.2022.

3.Today(29.07.2022), the case was listed before this Court. There is no representation on the side of the appellant. Learned counsel for the second respondent has appeared. No restoration petition was filed. No explanation regarding the maintainability of the appeal was furnished. The appeal was pending from the year 2012. The second respondent has to indemnify the first respondent when the appeal against first respondent is dismissed. There is no question of indemnifying the first respondent by the second respondent. Hence, for the reasons stated above, it is decided that there is no use in keeping the case pending any further.

4.Hence this Civil Miscellaneous Appeal is dismissed for default. No costs.

29.07.2022

Index: Yes / No
Internet : Yes / No

pnn

3 / 4



WEB COPY



C.M.A(MD)No.144 of 2012

R. THARANI, J

pnn

To

- 1.The Motor Accident Claims Tribunal (Subordinate Judge), Kovilpatti.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

C.M.A(MD)No.144 of 2012

29.07.2022