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C.R.P. No.547 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.547 of 2023

- 1.Mrs.Sangeetha,
2. Minor Jeeviska
by next friend mother, 1st petitioner
3. Mariappan
4. Kaliammal

... Petitioners

Versus

1. Subramani
2. GV Trans
23, Industrial Estate, Thirupur-641 602.
3. New India Assurance Company Ltd.,
(722401) VRV Complex,
Bhavani Main Road,
Perundurai-698 502.

... Respondents

PRAYER : Civil Revision Petition has been filed under Art. 227 of Constitution of India, praying to set aside the docket order passed by the Special District Judge for MCOP cases, Salem in unnumbered MCOP on 15.10.2022.



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For Petitioners

: Mr.G.Rajasekaran

ORDER

Challenging the impugned docket order passed by the trial judge of Special Court for MCOP Cases dated 15.10.2022, the claimants preferred the present Civil Revision Petition.

2. The learned counsel for revision petitioners/claimants would submit that the claimants are the legal heirs of deceased Jeeva @ Jeevanandan. On 05.08.2021 at about 09.45 p.m. while the deceased is sitting in front of his house, there was a quarrel between the 1st respondent and one Soundarrajan and Arulmani. The 1st respondent, who was employed as a driver of the lorry bearing Regn. No.KA-51 AB-3792 belongs to the 2nd respondent and he used to park the lorry near his house in the night after returning from work. At that time, while the 1st respondent driven the said lorry towards Soundarrajan and Arulmani in a rash and negligent manner, and when they moved away avoiding the said vehicle, the 1st respondent hit the deceased Jeeva @ Jeevanandan, who was sitting in front of his house,



thereby he died immediately. Since the accident was happened, when there was a wordy quarrel between 1st respondent and the said Arulmani and Soundarrajan, the deceased was made to die due to the negligent driving of 1st respondent while he was driving the lorry towards the said Soundarrajan and Arulmani. But, the trial court not inclined to take the said claim petition stating that about the alleged accident, a F.I.R. in crime No. 384 of 2021 was registered on the file of Sooramangalam Police Station under Sec. 294(b), 506(2), 307 and 302 I.P.C. against the 1st respondent and held that since it is a case of murder, the claim petition is not maintainable. Accordingly, the same was returned. But, by relying the preposition laid down by High Court of Bombay reported in **2017 ACJ 2067** in the case of ***Oriental Insurance Co. Ltd. vs. Enayat Khan and others***, which is extracted hereunder :-

“Motor Vehicles Act, 1988, Section 166 – Claim application – Maintainability of – Murder – Use of vehicle – Driver driving vehicle during the course of his employment was murdered by some unknown persons with the intention of committing theft of the vehicle – Claimants filed claim under Motor Vehicles Act and the Tribunal awarded compensation – Contention that deceased died in the course of employment



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and no compensation could have been granted under the Motor Vehicles Act – Whether murder of the deceased was due to an accident arising out of use of motor vehicle and claim under Motor Vehicles Act is maintainable – Held: Yes; it was an accidental murder.”

Thus, learned counsel for Revision Petitioners represented the petition stating that the claim petition as such is maintainable before the trial judge, and even then the Presiding Officer of the tribunal is not convinced. The trial judge pointed out that while driving the lorry, he has intention to commit murder, so, it cannot be treated as accident and when there is no accident, the court below has no jurisdiction to take the claim petition.

3. On seeing the contention of the Revision Petitioners that on that day, the deceased was sitting in front of the house and due to quarrel between 1st respondent and Arulmani and Soundarrajan, the alleged accident was happened. Admittedly, the deceased was died due to the hit of lorry driven by the 1st respondent. According to the claimants, the 1st respondent has driven the lorry in a rash and negligently and hit against the deceased Jeeva @ Jeevanandan, thereby he died immediately. As per the revision



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petitioners' averments, the deceased was no way connected with the quarrel between the parties. Therefore, all the facts assigned in the F.I.R. concludes that it is a murder subject to proof of the case. If the opportunity is not given to the Revision Petitioners/claimants to contest their case and to prove their claim, their valuable right of fair compensation would be defeated. So, the order of rejection made by the learned trial judge is set aside and the trial court is directed to take the case on file within a period of two weeks from the date of receipt of copy of this order subject to proof of the case during trial. The ratio laid down in the authority relied on by the Revision Petitioners is squarely applicable to the facts of the present case. Accordingly, this Civil Revision Petition is allowed. No costs.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

The Special District Judge for MCOP Cases,
Salem.

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T.V.THAMILSELVI, J.

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