



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Twenty Fifth day of April Two Thousand and Twenty
Three

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PRESENT

The Hon`ble Mr.Justice R.VIJAYAKUMAR

**C.M.P(MD) Nos.4385 and 1810 of 2023 and
C.M.P(MD.SR.No.25002 of 2023**

in

C.M.A(MD) No.1779 of 2013

Alagarsamy (Died)

... No Rank/Sole Appellant

1. Chitra
2. Geetha
3. Savadammal

... 1-3 Petitioners/
2-4 Proposed Appellants
(in all petitions)

(Appellants 2 to 4 are brought on record as LRS of the Deceased Sole Appellant vide court order dated 25.04.2023 made in CMP(MD)Nos.4385 and 1810/2023 and CMP(MD)SR.No.25002/2023 in CMA(MD)No.1779/2013 by RVJ)

- Vs. -

1. Arunachalam Chettiar
2. The Divisional Manager,
National Insurance Company Limited,
Rajapalayam.

... Respondents/Respondents
(in all petitions)

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 15 days in filing the Restore Petition in Civil Miscellaneous Appeal and thus render justice.

Prayer in CMP(MD). 1810/ 2023 :-

To bring the petitioners 1 to 3 as proposed Appellants as 2 to 4 on record as Legal Heirs of deceased Alagarsamy/1st Appellant and rank them as Appellants 2 to 4 to contest in the CMA(MD). No. 1779 of 2013 and thus render justice.



Prayer in CMP(MD)SR.No. 25002/ 2023 :-

To set aside the order and restore the Appeal in C.M.A.No.1779 of 2013 which was dismissed on 13.02.2023 by this Hon'ble Court.

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Prayer in CMA(MD). 1779/ 2013:-

To prefer this Memorandum of Grounds of Civil Miscellaneous Appeal against the award dated 21.12.2009 and made in M.C.O.P.No.494 of 2005 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dindigul and praying to set aside the same.

ORDER : These petitions coming up for orders on this day, upon perusing the petitions and the affidavit filed in support thereof and upon hearing the arguments of M/S. S.PUGALENDHI, Advocate for the petitioner in all petitions and of M/S.P.MALINI, Advocate on behalf of the Respondent No.2 in all petitions, the court made the following order:-

C.M.P(MD) No.4385 of 2023 has been filed to condone the delay of 15 days in restoring the appeal, which was dismissed for default on 13.02.2023 and C.M.P(MD) No.1810 of 2023 has been filed seeking to implead the legal heirs of the deceased appellant.

2. According to the learned counsel appearing for the sole appellant, the appellant, who is the injured claimant, had passed away on 13.01.2020 and they have filed an application on 07.02.2023 to implead the legal heirs to prosecute the appeal. The said Legal heir application was also numbered on 11.02.2023. However, when the appeal was listed for hearing on 13.02.2023, the learned counsel appearing for the appellant had not appeared and therefore, the entire appeal was dismissed for default. The application for restoring the appeal has been filed with a delay of 15 days.

3. The learned counsel appearing for the respondent in the appeal had contended that the application filed by the injured claimant seeking to set aside the dismissal of his claim petition is not maintainable, once the injured claimant has passed away, the legal heirs of the injured claimant cannot prosecute the appeal.

4. In view of the above facts, cause of action does not survive. However, the learned counsel appearing for the appellant had contended that the injured claimant had incurred the Medical Bills as per Ex.P.5 and Ex.P.6. Therefore, the legal heirs are entitled to prosecute the appeal. However, this Court is of the view that the maintainability of the appeal could be decided after restoring the appeal. The said issue is left open.

5. Being satisfied with the reasons stated in the affidavits, https://www.hcma.org.in/ conditions are allowed.



C.M.P(MD.SR.N



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6. Registry is directed to carry out the necessary amendment in the cause title and post the appeal on 06.06.2023.

sd/-
25/04/2023

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/06/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Dindigul.

ORDER
IN
C.M.P (MD) Nos.4385 and 1810
of 2023 and
C.M.P (MD.SR.No.25002 of 2023
in
C.M.A (MD) No.1779 of 2013
Date :25/04/2023

NA/BUC/SAR- /05.06.2023/3P/2C