



Tr.CMP.Nos.889 and 890 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Tr.CMP.Nos.889 & 890 of 2023

and

C.M.P.Nos.21328 & 21335 of 2023

Mohammed Ghouse

.. Petitioner in
Tr.C.M.P.No.889/2023

M.Farhana begum

.. Petitioner in
Tr.C.M.P.No.890/2023

Vs.

1.Borg Warner Morse Tec India Pvt. Limited,
Represented by its Authorised Officer,
No.79, SIDCO Industrial Estate,
Kakkalur, Thiruvallur District – 602 003

2.The Manager,
HDFC General Insurance Company Limited,
Motor Third Party Claims,
No.528, N.No.559, 2nd Floor,
Anna Salai, Chennai – 600 018

.. Respondents in
both Tr.C.M.Ps.



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Prayer in Tr.C.M.P.No.889 of 2023 : The Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the proceeding in M.C.O.P.No.324 of 2019 on the file of the MACT, Special Subordinate Judge, Thiruvallur and transfer the same to the file of the MACT, Small Causes Court, Chennai.

Prayer in Tr.C.M.P.No.890 of 2023 : The Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the proceeding in M.C.O.P.No.327 of 2019 on the file of the MACT, Special Subordinate Judge, Thiruvallur and transfer the same to the file of the MACT, Small Causes Court, Chennai.

For Petitioner : Mr.V.Tamilamudhu
(in both Tr.C.M.Ps.)

For R1 : No Appearance
(in both Tr.C.M.Ps.)

For R2 : Mr.T.K.Premkumar
(in both Tr.C.M.Ps.)

COMMON ORDER

These two Transfer Civil Miscellaneous Petitions have been filed by the claimants.

2. According to them, they suffered an accident on 09.05.2013. They would plead that the accident occurred on account of the rash and negligent



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manner in which a Mahindra Scorpio car, belonging to the 1st respondent, had been driven.

3. They would state that the vehicle, which belongs to the 1st respondent, had been insured with the 2nd respondent/Insurance Company. They would also plead that they have taken treatment for the orthopedic injuries that they had suffered at two institutions, namely MN Orthopedic Hospital and the Government Stanley Medical Hospital for a prolonged period of time.

4. As the petitioners were then residing in Thirunindravur, they invoked the jurisdiction of Motor Accidents Claims Tribunal - cum – Special Subordinate Court at Thiruvallur and presented the petitions in M.C.O.P.Nos.324 and 327 of 2019.

5. After the proceedings had been initiated, the petitioners would plead that they have moved out of Thirunindravur and are now residing in Pulianthope which comes within the jurisdiction of Chennai.



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6. Pleading physical inabilities, on account of the accident that they have suffered, they seek transfer of proceedings from the file of the Motor Accidents Claims Tribunal - cum – Special Subordinate Court at Thiruvallur to the file of the Motor Accidents Claims Tribunal - cum – Small Causes Court at Chennai.

7. Notice had been ordered in the application and the owner of the vehicle/the 1st respondent and the insurance company/HDFC General Insurance Company Limited were served in the proceedings.

8. This Court had allowed these Transfer Civil Miscellaneous Petitions on 17.10.2023. Subsequently, it was brought to the notice of this Court that when the order was passed, the name of the learned counsel appearing on behalf of the respondent had not been printed in the cause list. Therefore, the order was recalled and the matter had been posted before me for fresh arguments.

9. Mr.V.Tamilamudhu, appearing on behalf of the petitioners, would submit that the petitioner/Mohammed Ghouse has undergone operation



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which required fixation of surgical rods in the femur of the petitioner/Mohammed Ghouse.

10. He would also point out that the petitioner in Tr.C.M.P.No.890 of 2023, who is the wife of the petitioner in Tr.C.M.P.No.889 of 2023, had also suffered injuries and therefore, she is not in a position to travel to Thiruvallur for evidence.

11. He would also bring to my attention that on account of the fact that the petitioners could not travel from Pulianthope to Thiruvallur, the M.C.O.Ps. had been dismissed for default on 13.08.2021 and 13.10.2021 respectively. He would state that subsequently the dismissal for default had been set aside and both the proceedings have now been restored on to the file of the Motor Accidents Claims Tribunal - cum – Special Subordinate Court at Thiruvallur and it is posted for evidence.

12. Mr.T.K.Premkumar, appearing on behalf of the 2nd respondent/Insurance Company, would state that the Insurance Company is strictly opposing these Transfer Civil Miscellaneous Petitions. According to



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him, a perusal of the accident report would show that when the petitioners were admitted to the hospital, it was stated that they had suffered injuries on account of the accident that they had suffered with an unknown vehicle. It was only six years thereafter, the M.C.O.Ps. came to be filed by both the petitioners stating the owner of the tortious vehicle is the 1st respondent.

13. He would state that the genuineness of these petitions itself is under question. Apart from that, he would point out that the medical board had examined the petitioners nine years after the accident and had given a certificate. This requires that the person, who issued the certificate should be subjected to a cross examination by the Insurance Company. He would therefore state that the medical board being within the jurisdiction of Court at Thiruvallur, fitness of things require the proceedings to be continued at Thiruvallur and concluded therein.

14. Heard the arguments on either side and I have applied my mind to the facts of this case.



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15. Whether the accident is genuine or it is a false claim made by the petitioners is a matter for evidence. The Court would necessarily consider this issue as it has been specifically raised by the Insurance Company. The burden of proof would fall on the claimants to show that the accident which occurred is relatable to the vehicle which belonged to the 1st respondent. These aspects and the aspect of examination of the certificate given by the Officers of the Medical Board are matters which have to be gone into at the time of trial.

16. In the Transfer Civil Miscellaneous Petition, I am concerned only with the convenience of the claimants as against the inconvenience that will be caused to the Insurance Company. I am not rendering any finding on the merits of the case nor do I have the jurisdiction to render a finding on the merits of the case while sitting in a jurisdiction under Section 24 of the Code of Civil Procedure.

17. The narration of the aforesaid facts would show that since the petitioners were unable to travel from Pulianthope to Thiruvallur which would be around 75 Kms from where they are now currently residing,



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M.C.O.Ps. itself came to be dismissed for default. It had been restored only after a period of two years. The very nature of the motor accident proceedings requires the entire matter to be completed within a short while. On account of this fact, the Motor Vehicles Act itself has been amended by the Parliament wherein a mandatory period of 90 days is given to the police to complete the investigation and file their detailed accident report. The accident having taken place prior to the amendment, certainly, the amendment would not apply as it is only prospective. Yet I can take a cue from the directions that have been given by the Parliament in the amended provision and come to a conclusion that law now demands quick disposal of the case.

18. Apart from that, in terms of Motor Vehicles Act of 1989, the claimant has been given a right to initiate proceedings anywhere in the length and breadth of this country and it is now fallen on the Insurance Company to engage a counsel to contest the proceedings where the claimants choose to litigate. There is no dispute that the 2nd respondent/Insurance Company has a competent team of counsels at Thiruvallur as well as in Chennai. Therefore, the inconvenience that will be



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caused to the Insurance Company is minimal compared to the inconvenience that will be caused to the claimants.

19. Insofar as summoning of a person who has issued a certificate of disability to the claimants is concerned, he can always be summoned by the Transferee Court for examination. I am certain that if he is summoned and if he appears before the Court, the learned Transferee Judge would certainly give priority for recording of evidence of the person who has issued the certificate as he would have travelled a considerable distance to come to the Court and to depose in support of the certificate.

20. Taking into consideration the discussion that I have made above, the Transfer Civil Miscellaneous Petitions in Tr.C.M.P.Nos.889 and 890 of 2023 are allowed.

21. Hence, the proceedings in M.C.O.P.Nos.324 and 327 of 2019 pending on the file of the Motor Accidents Claims Tribunal - cum – Special Subordinate Court at Thiruvallur is withdrawn and it shall stand transferred to the file of the Motor Accidents Claims Tribunal - cum – Court of Small



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Causes at Chennai. No costs. The connected Civil Miscellaneous Petitions
are closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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V. LAKSHMINARAYANAN, J.

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To

- 1.The Motor Accidents Claims Tribunal - cum -
Special Subordinate Court,
Thiruvallur
- 2.The Motor Accidents Claims Tribunal - cum -
Court of Small Causes,
Chennai

Tr.CMP.Nos.889 & 890 of 2023

and

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