



C.M.A(MD)No.586 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 24.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.586 of 2020

1.R.Narasimhan (died)

2.N.Uma Maheswari

3.Minor.N.Kaushik

: Appellants

(Minor represented by his mother and natural guardian
N.Uma Maheswari/second appellant)

Vs.

1.M.Muruganantham

2.S.Palanisamy

3.M/s.Iffco Tokio General Insurance Company Limited,
KBS, Arcade No.2,
2nd Floor, 4/1044, Kovai Main Road,
Karur.

: Respondents

(Appellants 2 and 3 are brought on records as
legal heirs of the deceased sole appellant,
vide Court order, dated 22.02.2023 made in
C.M.P.(MD)No.8879, 8881 and 8883 of 2022
in CMA(MD)No.586 of 2020)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988, to allow the appeal and modify the award passed in



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M.C.O.P.No.42 of 2013 on the file of the Motor Accident Claims Tribunal/III Additional Sub Judge, Tiruchirappalli, dated 27.02.2015.

For Appellant : Mr.N.Sudhagar Nagaraj

For Respondents : Mr.V.Sakthivel, for R3.

: No Appearance, for R1 and R2.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.42 of 2013, dated 27.02.2015 on the file of the Motor Accident Claims Tribunal/III Additional Sub Judge, Tiruchirappalli.

2. The first appellant/claimant, who was awarded with compensation of Rs.2,89,191/- with interest at 7.5% per annum for the disability suffered, consequent to an accident occurred on 14.04.2012, challenged the quantum of compensation awarded at by the Tribunal.

3. It is evident from the records that since the third respondent/insurer has not chosen to file counter statement, all the respondents including the insurer were set ex-parte and the ex-parte award came to be passed on 27.02.2015 and thereafter, the present Civil Miscellaneous Appeal came to be filed, seeking enhancement of compensation.



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4. The learned counsel for the third respondent would submit that subsequent to the filing of the present appeal, the third respondent insurer has filed applications under Section 5 of the Limitation Act to condone the delay for filing the petition to set aside the ex-parte award and the application under Order IX Rule 13 of C.P.C., for setting aside the ex-parte award and after enquiry, both petitions came to be allowed and the ex-parte award was set aside by the trial court on 07.08.2021. He would further submit that after restoring the main petition, the same was adjourned for enquiry on 20.12.2021 and since the death of the sole claimant was reported, the case was adjourned for taking steps for the deceased claimant, that since steps were not taken, despite several opportunities, the main claim petition was dismissed for default on 29.08.2022 and that since the ex-parte award was also set aside and subsequently, the claim petition itself was dismissed for default, the present Civil Miscellaneous Appeal has become infructuous.

5. The learned counsel for the appellants would submit that they have taken steps for the death of the claimant before this Court and the insurer has filed an application during the pendency of the present appeal.



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6. Whatever it is, since the ex-parte award was already set aside, the present Civil Miscellaneous Appeal has become infructuous and more importantly, the claim petition itself is not pending, as the same was dismissed for default, nothing survives for further adjudication in this appeal. Hence, this Court has no other option, but to dismiss the appeal.

7. Accordingly, the Civil Miscellaneous Appeal is dismissed as infructuous. No costs.

24.01.2024

NCC : Yes/No
Index : Yes/ No
Internet : Yes/ No
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To

- 1.The III Additional Subordinate Judge/
Motor Accident Claims Tribunal, Tiruchirappalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR,J.



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