



C.R.P.No.5260 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

C.R.P.No.5260 of 2024
and C.M.P.No.29409 of 2024

1.Velayuthan
2.Vanaja

.. Petitioners

VS

1.Saravanan
2.John

3.The General Manager,
United India Insurance Co. Ltd.,
Noormal Building, Mysore Road,
Sulthan Bathery, Waynad District,
Kerala.

4.The Manager,
Iffco-Tokyo General Insurance Company Ltd.,
No.5/132C, Sundaram Street,
IndusInd Bank Upstairs,
Opp. New Bus Stand,
Avinashi Taluk, Tiruppur.

.. Respondents

Petition filed under Article 227 of the Constitution of India to set aside the dismissal of reopen petition in I.A.No.4 of 2024 in M.C.O.P. No.20 of 2021 pending on the file of Sub Court, Gudalur, The Nilgiris.

For Petitioners : Ms.P.T.Saleem Fathima

For Respondents : Ms.K.Swathi
for Mr.S.Bhaskaran for R3



C.R.P.No.5260 of 2024

ORDER

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This civil revision petition challenges the order of the learned Subordinate Judge, Gudalur at The Nilgiris in I.A.No.4 of 2024 in M.C.O.P. No.20 of 2021 dated 30.10.2024.

2. The civil revision petitioners are the claimants in M.C.O.P.No.20 of 2021. The said petition was presented claiming compensation for the death of one Libin, son of the present civil revision petitioners. They had arrayed the insurance companies as well as driver and owner of the vehicle as respondents. Summons were served on the parties. Thereafter, the matter was listed for trial.

3. When the case was listed for evidence of the claimants on 31.07.2024, on account of the fact that the advocates were abstaining from the Court, evidence could not be tendered by them. Consequently, the learned Motor Accidents Claims Tribunal closed the evidence.

4. Soon thereafter, an application was filed in I.A.No.4 of 2024 seeking to re-open the petitioners' side and for examination of



C.R.P.No.5260 of 2024

witnesses.

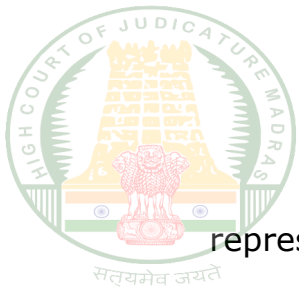
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5. This application was opposed by the third respondent insurance company stating that witness summons that had been taken out had been served as early as on 10.10.2024, summoned witness was present in Court and he could not be examined on account of the fact that the advocates have abstained from Court. Since no steps were taken despite several adjournments having been granted by the Court, the evidence was closed.

6. The third respondent also stated that it is not going to let in any evidence. It pleaded that the entire idea of the petitioners is only to drag on the matter and therefore sought for dismissal of the application.

7. The learned Trial Judge considered the affidavit and counter and dismissed the application to reopen the petitioners' side evidence. Hence this revision.

8. When the matter was listed before me on 18.01.2025, I requested Ms.Saleem Fathima to serve the entire papers on Mr.S.Bhaskaran, learned standing counsel for the third respondent insurance company. The papers have also been served. Ms.K.Swathi



C.R.P.No.5260 of 2024

represents Mr.Bhaskaran.

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9. Heard the counsel.

10. Motor accidents claims petition has been presented for the death of the son of the petitioners. The petitioners herein convinced the Court that the examination of the doctor is essential to prove the post accident injuries on the deceased. As the Court was convinced with the reasons given by the claimants, it issued summons to the doctor. Summon witness/doctor failed to appear on 10.04.2024 and 12.06.2024. The Court in order to give an opportunity to the party, adjourned the matter to 31.07.2024. Unfortunately, for the petitioners, the advocates who represented them participated in Court abstention. Hence the witness could not be examined on the adjourned date also. The Court being left with no other option had closed the evidence. Thereafter, the matter was posted for evidence of the third respondent insurance company and the third respondent insurance company made an endorsement that it has no oral evidence. Consequently, the matter was adjourned for arguments.

11. While I cannot mistake the Court for having closed the



C.R.P.No.5260 of 2024

evidence as neither the petitioners nor the counsel was present, I agree with Ms.Saleem Fathima that the examination of the witness would be crucial to prove the case of the claimants. Compensation can be granted post accident injuries. The manner of proof normally is through the examination of the medical doctor who had treated the deceased. If this evidence is not on record, there is a danger that the claimants will not be given any compensation under this head.

12. It is the case of the death of the son of the claimants. The claimants seem to be senior citizens. Therefore, I am inclined to consider the plea of Ms.Saleem Fathima though it is vehemently opposed by Ms.Swathi.

13. In the light of the above discussion, the civil revision petition is allowed.

13.1 The order passed by the learned Subordinate Judge, Gudalur at The Nilgiris in I.A.No.4 of 2024 in M.C.O.P. No.20 of 2021 dated 30.10.2024 is set aside.

13.2 The learned Trial Judge is requested to issue summons



C.R.P.No.5260 of 2024

to the doctor and it is the look out of the petitioners to ensure that the doctor appears before the Court on the date on which the petition is listed for his evidence. In case, the witness does not appear on the date fixed for evidence or on the next day to which the case is adjourned, the Court is at liberty to proceed further with the matter.

13.3 There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

10.01.2025

Index:Yes/No
Neutral Citation:Yes/No
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To

1.The General Manager,
United India Insurance Co. Ltd.,
Noormal Building, Mysore Road,
Sulthan Bathery, Waynad District,
Kerala.

2.The Subordinate Court,
Gudalur, The Nilgiris District.



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C.R.P.No.5260 of 2024

V. LAKSHMINARAYANAN,J.

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C.R.P.No.5260 of 2024

10.01.2025