

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
KANCHEEPURAM DISTRICT AT CHENGALPATTU**

Present: **Tmt.K.Kayathri, M.A.B.L.**

Additional District Judge,
Chengalpattu.

Wednesday, the 13th day of December 2023

I.A.No.4/2023 and IA.5/2023 in

MCOP No.191/2012

CNR No:TNKP01-000843-2012

The Manager,
M/s.New India Assurance Co.Limited,
(3rd party claims office)
GST Road, Chengalpattu

.. Petitioner/2nd Respondent

..Vs..

1.Janarthanan (Died)
2.Thulukanathammal
3.Sagunthala
4.Prabavathy
5.Krishnan

.. Respondents/petitioners

This Petition coming on 15.11.2023 for final hearing before this court in the presence of Thiru.T.Baskar, counsel for the Petitioner/2nd Respondent and Thiru.E.Kumarakotti, counsel for the Respondents/petitioners and upon hearing the arguments of both sides and perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:-

COMMON ORDER

IA.No.4/2023 in MCOP 191/2012

This petition is filed by the petitioner Under 151 CPC to re-open the case for further evidence of the petitioner/2nd respondent.

IA.No.5/2023 in MCOP 191/2012

This petition is filed by the petitioner under order 18 Rule 17 and Sec.151 of CPC to recall the petitioner/2nd respondent for further evidence.

2. The brief common averments made in the affidavits filed herein:-

The petitioner is the 2nd Respondent in the above case. The petitioner is employed in the Insurance Company and has been representing on behalf of the same. The Respondents.1 and 2/petitioners.1 and 2 have filed the above case for grant of compensation for the death of their son Venkatesan in the road accident happened on 24.2.1991 at about 12.15 p.m. at Chittalampakkam, Chennai due to rash and negligent driving of the 1st Respondent's vehicle bearing Registration No.TN-21-X-1359, Matador Van and claimed a compensation of Rs.3,00,000/- as against the respondents. The 1st respondent is the owner cum driver of the vehicle met with accident and contrary to the terms and conditions of the policy and to the permit rules and regulations have been violated, the 1st respondent is not entitled to invoke the indemnity from this respondent since the goods vehicle are not allowed to carry persons/unauthorized passengers. The 1st respondent cannot maintain claim petition against this respondent as he had violated the terms and conditions of the policy. The liability is on the part of the 1st respondent and not on 2nd respondent's insurance company and hence, it is highly necessary to examine the petitioner/2nd respondent to prove the liability. Hence, the petitioner herein had filed these petitions to reopen the case for further cross-examination of the petitioner/2nd respondent and to recall the petitioner/2nd respondent for further evidence.

3. The averments of the counter filed by 2nd Respondent and adopted by Respondents 3 to 5 in both IAs' in brief are as follows:

The respondents have denied all the contentions of the petitions and had pleaded in their counter that the petitioner/ 2nd respondent in the main O.P. has to prove his allegation that the 2nd respondent is not entitled to compensate the Respondents/petitioners. The laws have permitted the respondents/petitioners to get compensation due to the death of J.Venkatesan who is the son of respondents.1 and 2/petitioners.1 and 2 herein. Since the 1st respondent/ 1st petitioner in the main MCOP died, the respondents.3 to 5/petitioners.3 to 5 were impleaded as parties in the main O.P. as per this court's order.

The 2nd respondent Insurance company is a competent person to compensate the Respondents/petitioners due to the death of J.Venkatesan who met with motor accident and died on the spot. The allegation of the petitioner/2nd respondent that the 1st respondent's vehicle is not permitted to carry passengers are not admitted by the respondents/petitioners. The respondents/petitioner's evidence has already been closed and there is no necessity to reopen petitioner's evidence. The petitioner/ 2nd respondent's insurance company wants to drag on the above main O.P. which is pending from 2012. In the above said circumstances, the petitions are liable to be dismissed.

4. The point for Consideration in the above petitions is

Whether these petitions have to be allowed or not?

5. Point:-

Heard on both sides and perused the records. Perusal of records reveals that the main MCOP has been filed for grant of compensation for an amount of Rs.3,00,000/-

for the death caused to the son of Respondents.1 and 2/petitioners.1 and 2 in a road accident occurred on 24.2.1991 at about 12.15 p.m. at Chittalampakkam, Chennai and these petitions were filed to re-open the case and to recall the petitioner/2nd respondent for further evidence.

The main contention of the petitioner/ 2nd respondent is that the 1st respondent is the owner cum driver of the vehicle met with accident and contrary to the terms and conditions of the policy, the 1st respondent is not entitled to invoke the indemnity from this respondent since the goods vehicle are not allowed to carry persons/unauthorized passengers. It is their further contention that the liability is on the part of the 1st respondent and not on 2nd respondent's insurance company and hence, it is highly necessary to examine the petitioner/2nd respondent to prove the liability.

6. On the other hand, the contention of the respondents is that the 2nd respondent Insurance company is a competent person to compensate the Respondents/petitioners due to the death of J.Venkatesan who met with motor accident and died on the spot. It is their further contention that the petitioner/ 2nd respondent's insurance company wants to drag on the main O.P. which is pending from 2012.

7. Admittedly, the main MCOP is pending for arguments by petitioner/2nd respondent. At this juncture, the present petitions were filed. Belatedly, the petitioner has filed these petitions and the petitioner/2nd respondent has not offered sufficient reasons before this court and has not utilized the opportunities given by this court in time. However, considering the entire facts and circumstances of the case even though no documentary evidence has been produced by the petitioner/ 2nd respondent, considering the nature of the dispute involved in this case, this court is inclined to allow the petitions in order to give an opportunity to the petitioner/2nd respondent to adduce

evidence on their behalf and in the interest of justice and to ensure fair trial.

8. Finally, the petitions are allowed. No costs.

Dictated to the Shorthand writer and computerized by her and corrected and pronounced by me in open Court, this the **13th day of December 2023.**

sd/- K.Kayathri

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

Both side Witnesses And Exhibits : NIL

sd/- K.Kayathri

Additional District & Sessions Judge
Kancheepuram District at Chengalpattu.

Draft/Fair Order:(common order)
I.A.No.4/2023 and
IA.5/2023 in MCOP.No.191/2012
Dated:13.12.2023
ADJ/Chengalpattu.