

IN THE COURT OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL  
(SUBORDINATE JUDGES COURT), SATHYAMANGALAM

**PRESENT: Tmt. N.Sharmila, B.A., B.L.,  
Subordinate Judge, Sathyamangalam.**

Thursday, the 18<sup>th</sup> day of July 2024  
(2055 Thiruvalluvarandu Kurothy varudam Aadi Thingal 02<sup>nd</sup> day)

**I.A.No.2/2024 in  
O.S.No.110 of 2016**

1. D.R.Mohan  
2. R.Kalaiselvan

...Petitioners/Plaintiff's

/Vs/

1. M.Saroja  
2. R.Subha

...Respondents/Defendants

This petition was came up for final hearing before me on 25.06.2024 in the presence of Thiru.K.T.Rajan, Advocate for Petitioners and Thiru.M.Appusamy, Advocate for the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent called set exparte and upon perusing the entire case records, on hearing the arguments of both sides, and having stood over for consideration till this date, this court delivered the following:

**ORDER**

This Petition filed under Order 18 Rule 4 and 151 of CPC to pass orders to appoint an advocate commissioner to record the cross examination of PW4 by the 1<sup>st</sup> defendant side.

**2.The averments of the affidavit, filed along with petition on behalf of the petitioner in brief are as follows:**

The 1<sup>st</sup> petitioner herein and 1<sup>st</sup> Plaintiff in the above suit. The 1<sup>st</sup> Petitioner filing this

affidavit on behalf of the 2<sup>nd</sup> petitioner/2<sup>nd</sup> plaintiff also. The petitioner crave leave of this Honourable court to treat the plaint as part of this affidavit. The petitioner submit that, the above suit is posted today for cross examination of PW4 namely S.Raju son of R.Srinivasan, who was one of the attesters of the receipt issued by the 1<sup>st</sup> respondent/1<sup>st</sup> defendant. The petitioner submit that the witness S.Raju met with an accident four months back and has sustained fracture of right leg below the knee and he attended this Hon'ble court on 13.03.2024 inspite of his injury and persistent pain, but he was not cross examined by the 1<sup>st</sup> respondent/1<sup>st</sup> defendant side. Now he is not able to walk due to on set of diabetic foot ulcer on the injured site and is bed ridden as per Doctor's advise on periodical check up. The petitioner submit that evidence of PW4 is necessary to bring the truth before this Hon'ble Court. As PW4 is bed ridden and unable to travel to attend this Hon'ble Court, an advocate Commissioner may be appointed for recording the cross examination of PW4 by the 1<sup>st</sup> defendant side at his residence at Door No: 48, West Maharaja Nagar, Kalapatty Village, Coimbatore City- 48. The petitioner prepared to bear the Advocate Commissioner's fee and costs. Otherwise, I will be put to irreversible loss an hardship. Therefore, in the interests of justice, this Hon'ble Court may be pleased to appoint an advocate Commissioner to record the cross examination of PW4 by the 1<sup>st</sup> defended side.

**3. The averments of the counter filed on behalf of the 1<sup>st</sup> respondent in brief is as follows:**

The petition in I.A.No.2/2024 under Order 38 rule 4 and section 151 CPC filed by the petitioners/plaintiffs is patently false, frivolous and vexatious and not maintainable in both in law and in facts of the case. Save as to the matters that are expressly admitted herein, this 1<sup>st</sup> respondent/1<sup>st</sup> defendant do not admit any of the averments alleged in the

affidavit filed in the support of the petition and put the petitioners to strict proof of the same. The allegations in para 3 of the affidavit that "the witness S.Raju met with an accident four months back and has sustained fracture of right leg below the knee and he attended this Honorable court on 13.03.2024 in spite of his injury and persistent pain, but he was not cross examined by the 1st respondent/1st defendant side" is absolutely false to the core. The further allegation in the same para that now he is not able to walk due to onset of diabetic foot ulcer on the injured site and is bed ridden as per Doctor's advise on periodical checkup is also put to strict proof by the petitioners. The petition has to be dismissed for the following reasons. On 03.01.2024 the said Raju/PW4 filed chief affidavit on 03.01.2024 and this Honorable court posted the above case for cross examination on PW4 on 23.01.2024, 07.02.2024 and 29.02.2024 with conditional order. On 13.3.2024 the said S.Raju/PW4 was present for cross examination but his counsel Mr.C.K.Ramesh was not present due to fever. The respondent's counsel contacted him through his cell phone and he instructed to cross examine PW4 with his absence. Then PW4 S.Raju came to witness box and he was cross examined with some questions and he answered and his deposition was recorded by this Honorable court. Then PW4 S.Raju requested this Honorable Court to stop the cross examination and he guaranteed to appear for cross examination along with his counsel in the next hearing. Then this Honorable court suitably directed to appear for cross examination with his counsel on 19.03.2024. So the allegations in para 3 are utter falsehood. The petitioners did not file any doctor's certificate to the alleged accident which was four months old and fracture of right leg below the knee and also about the alleged diabetic disease. If really he was injured how he came to this Honorable Court on 13.03.2024 and gave evidence. This Honorable also took Judicial Notice of PW4 S.Raju's condition on

13.03.2024 and his adamant attitude only the cross examination was stopped. The witness PW4/S.Raju pleaded time on 13.03.2024 for further cross examination and assured to appear to cross examination along with his counsel on 19.03.2024. But on the contrary this petitioners came forward with this frivolous petition with contra averments against PW4 happened on 13.03.2024. On 19.03.2024 the petitioners filed this frivolous petition for examination of PW4 in his house through Court commissioner is not only contradicting the version of PW4 but also to drag on the proceedings. This petition was not filed by PW4/S.Raju by stating about his alleged disease and this was invented by the petitioners as delay and tactics method. It is pertinent to pin point that the Honorable High Court in CR0P No:4141/2017 issued suitable directions to dispose the original suit in O.S.No.110/2016 within a period of 8 months after receipt of the report of the Advocate Commissioner with regard to signature/thumb impression of this 1st respondent. On 06.06.2023 suitable memo was filed on behalf of this 1st respondent and there was no necessity to send the signature / thumb impression of the 1st respondent to the Forensic expert for obtaining opinion. The petitioners have not filed any documentary evidence to prove the allegations in para 3 of the affidavit about the sickness of PW4 S.Raju. Admittedly in the present scenario with all technical developments, mere contentions of the petitioner as to factor of sickness would not be a ground for not attending the court by PW4 after the part of cross examination was over on 13.03.2024. Further the petition to examine PW4 through Advocate Commissioner did not contain the name of the counsel in the copy of the petition. A court of Law does not help a Lethargic and irresponsible litigants by granting the Court's time. The petitioners are wasting the valuable time of this Honorable Court by simply forwarding this kind of frivolous petition and dragging on the matter unnecessarily. The petitioner had not filed not

even a single document to prove the alleged sickness of PW4 S.Raju. The petition has no merits at all. The petition in I.A.No.2/2024 was not at all maintainable. It is therefore prayed that this Honorable court may be pleased to dismiss the petition in I.A.No.2/2024 in O.S.No.110/2016 filed by the petitioners/Plaintiffs with the cost of the 1st respondent/1st defendants.

#### **4. Points For Consideration:**

1. Whether the petition is allowed or not?:

#### **5. Evidences:**

In this petition, there is no oral or documentary evidence on either side. Both the counsels appearing for the petitioners as well as the respondents have agitated the matter and dealt with the points at length. In the light of the above, I shall now proceed to discuss the points.

#### **6. Points:**

6.1. Both side heard. Records perused.

6.2. The above suit is filed for declaration and permanent injunction. The above suit is posted for cross examination of PW4. In this stage the petitioners/Plaintiffs filed the above petition for appoint of advocate commissioner to record the cross examination of PW4 by the 1<sup>st</sup> defendant side.

6.3. The counsel for the petitioners argued that, the PW4 met with an accident and has sustained fracture of right leg below the knee, so he is not able to walk due to on set of diabetic foot ulcer on the injured side and is bed ridden as per the doctor advise. The petitioners have not filed any documentary evidence and medical certificate in respect of

injuries sustained by the PW4. Hence the reason given by the petitioner to allow this petition is not acceptable one. Accordingly this petition is dismissed.

7. In the result this petition is dismissed. No costs.

Dictated to the Steno typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 18<sup>th</sup> day of July 2024.

Subordinate Judge,  
Sathyamangalam.

**List of witness for Both side:** NIL

**List of Document:** NIL

Subordinate Judge,  
Sathyamangalam.