

Gowri and Vs. Irulandi,

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Court : Chennai

Decided On : Apr-22-2010

Judge : M. Jaichandren, J.

Acts : [Hindu Succession Act, 1956](#) - Sections 8A, 9 and 10; ;[Motor Vehicles Act, 1988](#) - Section 163 and 163(1); ;[Motor Vehicles Act, 1939](#); ;[Code of Civil Procedure \(CPC\) , 1908](#) - Section 2(11)

Appeal No. : C.R.P. (PD) No. 3964 of 2009 and M.P. No. 1 of 2009

Appellant : Gowri And; Vivedha

Respondent : irulandi,; Othchammal,; Ramamoorthy And; National Insurance Company Limited

Advocate for Def. : S.S. Swaminathan, Adv. for R1 and R2

Advocate for Pet/Ap. : T. Selvam, Adv.

Judgement :

ORDER

M. Jaichandren, J.

1. This Civil Revision petition has been filed to set aside the order passed by the Motor Accidents Claims Tribunal (Subordinate Judge), Tiruppur, in taking on file M.C.O.P. No. 724 of 2006, dated 12.7.2006, and to reject the said petition.

2. The learned Counsel for the petitioner had stated that the petition, in M.C.O.P. No. 724 of 2006, had been taken on file by the Motor Accidents Claims Tribunal, Tiruppur, without following the procedures established by law. The petition had been taken on file, without noticing that the first respondent cannot have any remedy and as such, he cannot file the Motor Accident Claims Original Petition, as per Section 8(A), 9 and 10 of the [Hindu Succession Act, 1956](#), as he does not come under the category of Class I heirs.

3. The Tribunal ought to have noticed that the petition is not maintainable, as the first respondent cannot claim a right over the property of the pre-deceased son. While filing the petition, a wrong information had been given stating that there are no other legal heirs, except the petitioners therein. In fact, the petitioners in the present civil revision petition are the wife and the daughter of the deceased person.

4. The learned Counsel appearing on behalf of the first and the second respondents had submitted that the Motor Accidents Claims Original Petition, in M.C.O.P. No. 724 of 2006, had been filed before the Motor Accidents Claims Tribunal (Court of Subordinate Judge, Tiruppur), by the parents of the deceased person. He had submitted that the petition is maintainable, as per Section 163 of the [Motor Vehicles Act, 1988](#), which reads as follows:

163. Scheme for payment of compensation in case of hit and run motor accidents.--(1) The Central Government may, by notification in the Official Gazette, make a scheme specifying, the manner in which the scheme shall be administered by the General Insurance Corporation, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, the administration of the scheme and the payment of compensation.

(2) A scheme made under Sub-section (1) may provide that---

(a) a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both;

(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of the Central Government, by such officer or authority to any other officer or authority.

(c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund under the [Motor Vehicles Act, 1939](#), as it stood immediately before the commencement of this act:

Provided that no such retrospective effect shall be given so as to prejudicially affect the interest of any person who maybe governed by such provision.

Further, Section 2(11) of the Civil Procedure Code, 1908, defines a legal representative as a person who, in law, represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued. As such, the civil revision petition filed by the petitioners is devoid of merits and therefore, it is liable to be dismissed.

5. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, this Court is of the considered view that the civil revision petition filed by the petitioners is devoid of merits. It is seen that M.C.O.P. No. 724 of 2006, had been filed by the parents of the deceased, Ganesan, and the petitioners in the Civil Revision Petition have also been made as parties to the petition, as the third and the fourth respondents. This Court is not inclined to grant the reliefs, as prayed for by the petitioners in the present civil revision petition, at this stage. However, it is made clear that it would be open to the petitioners to raise the issue regarding the maintainability of the Motor Accidents Claims Original Petition, before the Motor Accidents Claims Tribunal (Subordinate Judge, Tiruppur), in the manner known to law, and it is for

the said Tribunal to adjudicate the said issue, as and when it arises for its consideration, on merits and in accordance with law. The civil revision petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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