

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2016

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.2593 of 2004
and
C.M.P.No.19813 of 2004

Ramakrishnan

... Petitioner

vs.

1.Prema

2.Priyanka (minor)

rep. by mother Mrs.Prema.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 24.02.2004 made in I.A.No.551 of 2003 in MCOP No.585 of 1996 on the file of the Motor Accident Claims Tribunal/Additional Subordinate Court, Salem.

For Petitioner : Mr.N.Veerasamy

For respondents 1 and 2: Mr.R.Mohammed Nasurallah
for Mr.K.V.Shanmuganathan

ORDER

This Civil Revision Petition arises against the fair and final order dated 24.02.2004 made in I.A.No.551 of 2003 in MCOP No.585 of 1996 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Court), Salem.

2. The claimants/respondents herein filed a petition in MCOP No.585 of 1996 claiming a compensation of Rs.75,000/- on the file of the Motor Accident Claims Tribunal, Salem. By an exparte award dated 30.11.2001, the Tribunal has awarded a sum of Rs.69,500/- with interest at 9% as compensation. Aggrieved by this exparte award, the revision petitioner filed an Interlocutory Application in I.A.No.551 of 2003 in MCOP No.585 of 1996 praying to condone the delay of 479 of days in filing the petition to set aside the exparte award. By order dated 24.02.2004, the Tribunal dismissed the Interlocutory Application in I.A.No.551 of 2003 in MCOP No.585 of 1996.

3. Mr. N.Veerasingam, learned counsel appearing for the revision petitioner would submit that the revision petitioner was not served with any notice in the claim proceedings and therefore, he was not aware of the claim proceedings. He came to know about the exparte award only when the claimants' counsel sent a letter dated 3.2.2003 to him demanding payment of the award amount. The learned counsel would further submit that the revision petitioner had sold the vehicle much before the date of accident and the claimants ought to have claimed against the proper party and as such, he is not liable to pay the award amount. Therefore, the revision petitioner took steps to set aside the exparte award by way of filing an Interlocutory Application in I.A.No.551 of 2003 in MCOP No.585 of 1996 to condone the delay of 479 days in filing the petition to set aside the exparte

award passed in MCOP No.585 of 1996. The Tribunal, without considering the contentions made on behalf of the revision petitioner and without considering the facts of the case, has erroneously dismissed the Instant Interlocutory Application. Therefore, he seeks for setting aside the impugned order passed by the Tribunal.

4. Mr.R.Mohammed Nasurallah, learned counsel for the respondents would submit that despite notice, the revision petitioner neither chose to appear in person or through a counsel before the Tribunal and thereafter, paper publication was also caused as per the direction of the Tribunal. Therefore, the revision petitioner deliberately absented from appearing before the Court. In a petition filed under Section 5 of the Limitation Act, each day's delay has to be properly explained. Since the revision petitioner has not adduced proper explanation for the delay, the Tribunal has rightly dismissed the instant Interlocutory Application.

5. Heard Mr.N.Veerassamy, learned counsel appearing for the revision petitioner and Mr.R.Mohammed Nasurallah, learned counsel for the respondents and perused the materials on record.

6. The main contention of the revision petitioner is that he had sold the vehicle involved in the accident on 26.6.1991 itself much before the accident, which occurred on 17.7.1993, and therefore, he is nothing to do

with the accident and he is not liable to pay the award amount. Therefore, he intends to contest the case and thereafter, according to him, the case has to be decided on merits.

7. In such circumstances, the Law of Limitation cannot be invoked for destroying the rights of the parties. No prejudice would be caused if the petitioner is given an opportunity to contest the case on merits.

8. ***In Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others [2013 (5) CTC 547 (SC)]***, the Hon'ble Supreme Court has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an Application for condonation of delay.

9. Subsequently, the ratio laid down in the said judgment has been followed by this Court in ***Ajay Kumar Gulecha Vs. J.Vijayakumar and another [2015 (1) CTC 811]***.

10. Considering the facts and circumstances of the case and following the decisions cited above, this Court is inclined to pass the following orders:-

(i) The fair and final order dated

24.02.2004 passed in I.A.No.551 of 2003 in MCOP

No.585 o 1996 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Court), Salem, is set aside.

(ii) The delay in filing the Application to set aside the exparte award is condoned and the Interlocutory Application No.551 of 2003 in MCOP No.585 of 1996 is allowed.

(iii) In the event of allowing the petition filed under Order IX, Rule 13 CPC to set aside the exparte award, the Tribunal is directed to dispose of the MCOP No.585 of 1996 within a period of three months from the date of the order to be passed setting aside the exparte award.

11. Accordingly, the Civil Revision Petition is allowed. The connected Civil Miscellaneous Petition is closed. No costs.

27.04.2016

Index : yes / no

Internet :yes / no
asvm

D.KRISHNAKUMAR, J.

(asvm)

To

The Motor Accident Claims Tribunal
(Additional Subordinate Court),
Salem.

C.R.P.(NPD) No.2593 of 2004
and
M.P.No.19813 of 2004

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