



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2016

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD).No.897 of 2015

WEB COPY

The Director of Industries and Commerce,
Chennai, Functioning Office at
Alagar Kovil Main Road,
Near Tamil Nadu Hotel,
Madurai.

..Appellant

Vs.

Subbulakshmi

..Respondent

Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of C.P.C., against the order dated 29.06.2015 made in I.A.No.840 of 2014 in M.C.O.P.No.1368 of 2000 on the file of the Motor Accident Claims Tribunal (IV-Additional District Judge), Madurai.

For Appellant	:Mr.D.Muruganantham
	Additional Government Pleader
For Respondent	:Mr.G.Prabhu Rajadurai

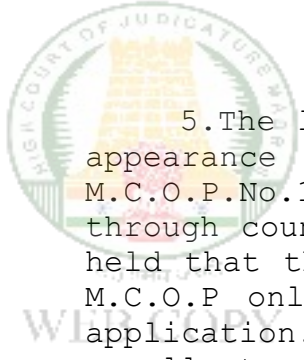
JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order dated 29.06.2015 made in I.A.No.840 of 2014 in M.C.O.P.No.1368 of 2000 on the file of the Motor Accident Claims Tribunal (IV-Additional District Judge), Madurai.

2.The appellant is the respondent in M.C.O.P.No.1368 of 2000. The respondent filed claim petition claiming a sum of Rs.1,00,000/- for the injury sustained by her in the accident took place on 18.06.2000. The appellant entered appearance and filed counter statement. The respondent was examined as P.W.1 in chief and M.C.O.P was posted on 16.04.2007 for cross-examination. The appellant and his counsel did not appear and did not cross-examine the respondent and an ex-parte order was passed on 16.04.2007. The respondent filed E.P.No.32 of 2012.

3.According to the appellant, they came to know about M.C.O.P.No.1368 of 2000 only when they received notice in the E.P petition on 29.09.2012. They filed application to set aside the ex-parte order dated 16.04.2007 along with condonation of delay. The application for condonation of delay was ordered on 14.10.2014. Then the application to set aside the ex-parte order was numbered as I.A.No.840 of 2012. In the said application, the appellant has stated that they came to know about the ex-parte decree only when the notice was served on them on 29.09.2012 in E.P.No.32 of 2012. They also submitted that the case bundle was lost and therefore, they had no knowledge of pendency of the case, till they received notice in E.P.

4.The learned counsel for the respondent contended that the claim petition in M.C.O.P.No.1368 of 2000 is of the year 2000 and ex-parte order was passed on 16.04.2007 and the appellant has filed petition to set aside the ex-parte order after 8 years and they have not explained the delay properly in filing the petition to set aside the ex-parte order.



5.The learned Judge considering the facts that the appellant entered appearance through the counsel and filed counter statement in M.C.O.P.No.1368 of 2000, but failed to appear either personally or through counsel on 16.04.2007 and failed to cross-examine the respondent, held that the reason given by the appellant that they came to know about M.C.O.P only on 29.09.2012 is contrary to the facts and dismissed the application. Secondly the learned Judge held that the reason given by the appellant that the officer, who was looking after the case was transferred and therefore, bundle got mixed with other bundle, is not valid reason to set aside the ex-parte award and dismissed the application by order dated 29.09.2012.

6.Against the said order of dismissal, the present Civil Miscellaneous Appeal is filed.

7.The learned counsel for the appellant contended that the learned Judge failed to consider the reason given by the appellant to set aside the award dated 16.04.2007. The learned Judge without properly appreciating the fact that the application to condone the delay was ordered and application to set aside the ex-parte award is only a consequential application. The learned Judge failed to consider the fact that the appellant is disputing their liability and the appellant being a Government Agency did not have any intention to drag on the proceedings. The learned counsel for the appellant filed additional typed set of papers to the fact that the appellant had sold the vehicle on 08.05.2000 itself and the accident took place on 18.06.2000 and the appellant was not the owner of the vehicle on the date of the accident and also produced copy of Form-29 being the notice of transfer of ownership of motor vehicle.

8.The learned counsel for the respondent submitted that the appellant has suppressed the fact that they entered appearance in M.C.O.P and filed counter statement. After chief examination of the respondent, the appellant and his counsel did not appear and did not cross-examine the respondent. In the circumstances, the reason given by the appellant to set aside the ex-parte order is not a genuine reason. In any event, it is neither sufficient nor valid reasons to set aside the ex-parte order. Further submitted that as far as the transfer of ownership is concerned, there is no proof that form-29 was submitted to the Registering Authority by the competent person on 08.05.2000 or any other subsequent dates. Further, the appellant name was shown as owner in the register maintained by the Registering Authority.

9.In such case, as per the judgment of this Court in M.DURAIAMY V. K.BALAKRISHNAN AND ANOTHER reported in (2010)6 MLJ 543, the appellant is liable to pay compensation amount. The learned counsel relied on Paragraph No.19 of the above said judgment and the same is extracted hereunder:

"19.In yet another decision in *S.N.Shanmugam v.Shankarlal Jain* AIR 2003 Mad 183 : (2003) 1 MLJ 380 : (2003) 2 LW 126, a Division Bench of this Court has considered a similar issue, where the Motor Vehicle met with an accident and caused injuries. The claimant impleaded the first respondent-Sankarlal Jain, as owner of the motor cycle. The first respondent therein filed a counter affidavit, contending inter alia that on the date of accident, namely 26.01.1995, he was not the owner of



the vehicle nor he had caused the accident. He further stated that he had sold the motor cycle to one Sundaramoorthy, who is said to have caused the accident. Based on the said information, the said R.Sundaramoorthy, was impleaded as the second respondent in the Claim Petition. According to the second respondent, he had purchased the vehicle only on 15.01.1995. the accident has caused by some other person and therefor, he was not liable to pay compensation. The Tribunal, on evaluation of pleadings and evidence, dismissed the claim petition against shankarlal Jain and directed the second respondent therein, the purchaser to pay the quantum of compensation determined by the Tribunal. Questioning the said direction and the dismissal of the Claim Petition against the shankarlal, original owner the injured filed an appeal before this Court. After considering the judgment of the Supreme Court in Dr.T.V.Jose v. Chacko P.M., (Supra) and other decisions, the Division Bench, set aside the findings of the Tribunal and held that Shankarlal, the original owner is also liable to pay compensation. In all other respects, the Division Bench confirmed the decision of the Tribunal."

10.From the materials on record, it is seen that the appellant entered appearance through Advocate and filed counter statement. But did not cross-examine P.W.1/respondent and did not let-in any evidence disputing their liability. The reason given by the appellant that they came to know of the case only when they received notice in E.P is contrary to fact. The reason given by the appellant that the officer who was looking after the case was trasnferred and the case bundle was lost are not valid grounds to set aside exparte award. The appellant was not vigilant enough to putforth their case and defend the M.C.O.P. Further the appellant failed to prove that the vehicle was sold by them on 08.05.2000 itself. Further, as per the judgment of this Court dated 15.05.2010 relied on by the learned counsel for the respondent, the appellant having been shown as owner at the time of accident, is liable to pay compensation.

For the above reasons, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar(CS)

To

The Motor Accident Claims Tribunal
(IV-Additional District Judge), Madurai.

+1cc to the Special Government Pleader, in SR.22040

+1cc to M/s.G.Prabhu Rajadurai, Advocate in SR.21704