

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3315 of 2011
& M.P.No.1 of 2011

Oriental Insurance Company Ltd.,
 Represented by its Deputy Manager
 R.Parameswaran. Having Divisional Office
 at.No.1.RVR Building, II Floor,
 Head Quarters Road, Coimbatore.18 .. Petitioner

Vs.

1. E.M.Abdul Kadhar(Died)
 2. Ammethu
 3. R.Singaram
 4. Chellapan .. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C.,
 against the fair and decretal order dated 18.04.2009 made in
 I.A.No. 1034 of 2007 in E.P.No. 4 of 2007 in M.C.O.P.No. 580 of
 1995 passed by the learned Motor Accidents Claims Tribunal, (II
 Additional Judge), Coimbatore.

For Petitioner
 For R1

: Mr.M.Raja Sekhar
 : Mr.C.Deivasigamani

For R2

: No appearance

For R3

: Batta Due

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 18-04-2009 made in I.A.No. 1034 of 2007 in E.P.No. 4 of 2007 in M.C.O.P.No. 580 of 1995 passed by the Motor Accidents Claims Tribunal, (I Additional Judge), Coimbatore.

2. The petitioner is the third respondent, the respondents 1 and 2 are the claimants, third respondent is the first respondent and fourth respondent is the second respondent in M.C.O.P.No.580 of 1995 on the file of the II Additional District Court (Motor Accidents Claims Tribunal), Coimbatore. The respondents 1 & 2 filed the above M.C.O.P. against the respondents 3 & 4 and petitioner claiming a sum of Rs.1,50,000/- as compensation for the death of one Haneefa, son of the first petitioner in the accident that was occurred on 05.08.1994. Petitioner contested the claim petition. After appreciating the pleadings, oral and documentary evidence by order dated 08.11.1996, the learned II Additional District Judge, Coimbatore granted a sum of Rs.1,10,000/- as compensation to the respondents 1 and 2. The petitioner did not deposit the said amount. The respondents 1 and 2 filed E.P.No.4 of 2007 for

recovery of the amount. The petitioner filed E.A.No.6 of 2007 under Section 47 C.P.C, contending that award is not executable. The said E.A. was dismissed.

3. The petitioner filed present I.A.No.1034 of 2007 to recall the award, on the ground that the vehicle bearing Registration No.TN 09 C 1800 relates to Kinetic Honda and not to a lorry and also submitted that they came to know about the same only when they received a letter dated 20.02.2007 from R.T.O., Chennai (West). They could not take this plea in M.C.O.P. as investigation was not completed. The respondents 1 and 2 did not file any counter.

4. The learned Judge considering all the materials available on record, dismissed the application on the ground that award was passed on 08.11.1996, earlier the E.A.No.6 of 2007 filed by the petitioner under Section 47 of C.P.C. to declare the award as null and void, was dismissed on 07.08.2007. Only to drag on the proceedings, the petitioner has come out with the present application.

5. Against the order of dismissal dated 18.04.2009 made in I.A.No.1034 of 2007 in E.P.No.4 of 2007 in M.C.O.P.No.580 of 1995, the present civil revision petition is filed by the petitioner.

6. Heard the learned counsel appearing for the petitioner as well as first respondent and perused the materials available on record.

7. From the materials available on record, it is seen that the accident had taken place on 05.08.1994 and the respondents 1 and 2 claimed compensation by filing claim petition in the year 1995. The petitioner filed counter statement and contested the claim of the respondents 1 and 2. In the counter statement filed by the petitioner, the petitioner did not state that no policy was issued to the respondents 3 and 4 in respect of the lorry owned by the fourth respondent. At present, the contention of the petitioner is that the vehicle bearing Registration No.TN 09 C 1800 is relate to Kinetic Honda and not to a lorry. Even now the petitioner has not taken a stand that no policy was issued to the fourth respondent, owner of the lorry. In addition to that the petitioner had already filed E.A.No.6 of 2007 under Section 47 C.P.C. alleging that the award is not

executable. The said E.A. was dismissed. The petitioner has not taken further proceedings, challenging the order passed in E.A.No.6 of 2007 filed under Section 47 C.P.C. The said order has become final. The present application is filed in a different form. In view of the dismissal of the earlier E.A., the present I.A. is not maintainable. The petitioner has come out with the above application, after 11 years of passing award. The reason given by the petitioner that they could not take this plea in the counter statement filed in the M.C.O.P., as investigation was not completed is without any merits. For the above reason this civil revision petition is liable to be dismissed and it is were by dismissed.

8. Accordingly this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.08.2017

Index : Yes/No
dm/gsa

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V.M.VELUMANI.,J.

dm

To

The Motor Accidents Claims Tribunal,
(I Additional Judge), Coimbatore.



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