

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2017

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3847 of 2011
and M.P.No.1 of 2011

New India Assurance Co. Ltd.,
Salem.

.. Petitioner

Vs

1.Mala
2.Lakshmipriya
3.Raju
4.Anitha

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 18.07.2011 made in I.A.No.376 of 2009 in M.C.O.P.No.260 of 2007 on the file of the Motor Accident Claims Tribunal (Additional District Judge and Special Judge for EC Act cases) Salem.

For Petitioner : Mr. S.Manohar
For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 18.07.2011 made in I.A.No.376 of 2009 in

M.C.O.P.No.260 of 2007 on the file of the Motor Accident Claims Tribunal (Additional District Judge and Special Judge for EC Act cases) Salem.

2. The petitioner is the second respondent and the respondents are the claimants in M.C.O.P.No.260 of 2007 on the file of the Motor Accident Claims Tribunal (Additional District Judge and Special Judge for EC Act cases) Salem. The respondents filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one Balu in the accident that was occurred on 22.08.2006. The summon was served on the petitioner and on that date, the petitioner did not appear and was set exparte. On 04.01.2008, the exparte award was passed. The respondents filed R.E.P.No.45 of 2008 for execution of the award. The petitioner after receiving notice in the said R.E.P., filed I.A.No.376 of 2009 under Section 5 of the Limitation Act to condone the delay of 534 days in filing the petition to set aside the exparte award dated 04.01.2008.

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3. According to the petitioner, the vehicle was insured with their Kerala office and they could not get necessary particulars in time. Due to the said reason, they could not appear and conduct the case. After

receipt of notice in the R.E.P., they filed the present application to condone the delay of 534 days in filing the petition to set aside the exparte award.

4. The respondents filed counter affidavit opposing the said application and submitted that the reason given by the petitioner for condonation of delay is not a valid reason. Even after receipt of notice in the R.E.P., the petitioner did not file the present application immediately.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application on the ground that the petitioner has not given any valid reason to condone the delay.

6. Against the order of dismissal dated 18.07.2011 made in I.A.No.376 of 2009, the present civil revision petition is filed by the petitioner/Insurance Company.

7. Heard the learned counsel for the petitioner and perused the materials on record. There is no representation on behalf of the

respondent.

8. It is a well settled that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits.

9. In the present case, the petitioner has stated that the vehicle was insured with their Kerala office and in order to get the particulars, the delay has occurred. In the circumstances, an opportunity must be given to the petitioner to putforth his case on merits.

10. At this juncture, the learned counsel for the petitioner submitted that the application may be allowed on terms.

11. Considering the submissions made by the learned counsel for the petitioner, the Civil Revision Petition is allowed by setting aside the order dated 18.07.2011 made in I.A.No.376 of 2009. The petitioner is directed to deposit 50% of the award amount to the credit of M.C.O.P.No.260 of 2007 on the file of the Motor Accident Claims

Tribunal, (Additional District Judge and Special Judge for EC Act cases), Salem. On such deposit, the concerned Judge is directed to deposit the said amount in any one of the nationalised banks and the petitioner is directed to file counter within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the Tribunal is directed to dispose M.C.O.P.No.260 of 2007 on merits and in accordance with law after affording an opportunity to both the parties within a period of three months from the date of filing of the counter by the petitioner.

01.08.2017

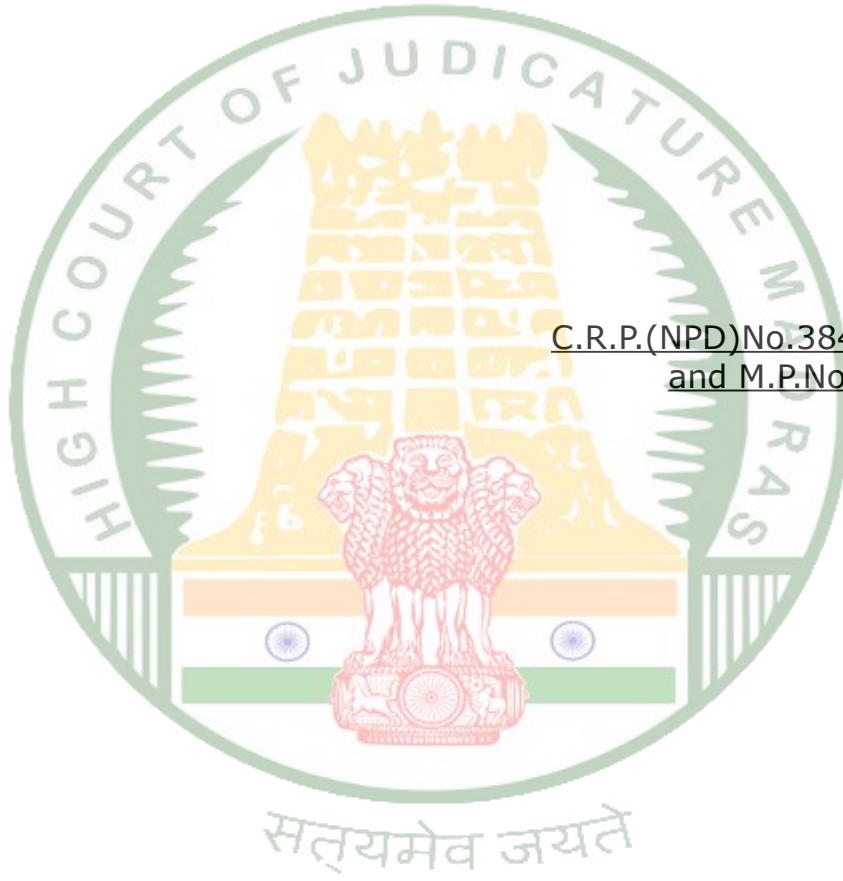
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To

The Motor Accident Claims Tribunal
(Additional District Judge and
Special Judge for EC Act cases), Salem.

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