

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4368 of 2011

New India Assurance Company Limited
Branch Office, 12, New Hospital Road,
Gobi 638 452.

.. Petitioner

Vs.

1. Janaki
2. A.Amanlla
3. P.R.Viswanathan

.. Respondents

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India, against the fair and decretal order dated 28.09.2011, made in I.A.Sr.No.10737 of 2011 in M.C.O.P.No.355 of 2009, on the file of the Motor Accident Claims Tribunal (Principal District Judge), Erode.

For Petitioner : Mr.El Veera Ravindran
For R1 : Mr.A.K.Kumarasamy
For R2 & R3 : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 28.09.2011, made in I.A.Sr.No.10737 of 2011

in M.C.O.P.No.355 of 2009, on the file of the Motor Accident Claims Tribunal (Principal District Judge), Erode.

2. The petitioner is second respondent, first respondent is claimant, respondents 2 and 3 are the respondents 2 and 3 in M.C.O.P.No.355 of 2009, on the file of the Motor Accident Claims Tribunal (Principal District Judge), Erode. The first respondent filed claim petition, claiming a sum of Rs.7,00,000/- for the death of one R.Selvaraj. According to the first respondent, the said R.Selvaraj is her husband. The petitioner filed counter affidavit and contested the M.C.O.P. After trial, by the award dated 08.04.2011, the Tribunal passed the award, directing the petitioner to pay a sum of Rs.3,95,000/- to the first respondent. After four months of passing award, petitioner filed I.A.Sr.No.10737 of 2011, to recall the award passed in the above M.C.O.P.No.355 of 2009.

3. According to the petitioner, the respondent played fraud on the Court and obtained award. One Pavalakodi also filed M.C.O.P.No.174 of 2009, on the file of Fast Track Court, Bhavani, claiming compensation for the death of R.Selvaraj, alleging that she is wife of the said R.Selvaraj. The Fast Track Court No.4, Bhavani,

Erode District, by the award dated 24.11.2009, passed an award, directing the petitioner to pay a sum of Rs.4,30,400/- to said Pavalakodi and her children. The petitioner paid compensation amount to the said Pavalakodi and her children. In the circumstances, the petitioner prayed for recalling the present award. The Tribunal returned the said application on 28.09.2011, as not maintainable.

4. Against the said return order by the Principal District Judge, dated 28.09.2011, made in I.A.Sr.No.10737 of 2011 in M.C.O.P.No.355 of 2009, the present civil revision petition is filed by the petitioner.

5. According to the petitioner, two persons have filed two M.C.O.Ps' in two different Courts, claiming compensation for the death of one R.Selvaraj, who died in the accident that occurred on 12.12.2008 at 5.30 a.m at Erode to Kavundapadi to Gobi main road, nearby Palapalayam bridge. Further he submitted that the respondent here in obtained award by playing fraud in the Court. This contention has no merits.

6. Heard the learned counsel appearing for both the parties and perused the materials on record.

7. Both the M.C.O.Ps' were filed in the very same Erode District. One at Fast Track Court, Bhavani and another at Principal District Court, Erode. Both the claim petitions are filed against the same owner and petitioner herein and on the same policy issued by the petitioner. It is not in dispute that the petitioner is insurer of vehicle, which was involved in the accident and caused death of R.Selvaraj. In both the M.C.O.Ps' petitioner was a party. The petitioner entered appearance, filed counter affidavit and contested through Advocate. At that time, the petitioner did not bring it to the notice of the Court that two M.C.O.Ps' are filed, claiming compensation for the death of R.Selvaraj, even though the petitioner will be maintaining one file with regard to the insurance policy issued to the owner of the vehicle. Both the claimants have filed M.C.O.P, claiming to be the wife of deceased R.Selvaraj. In the first instance, the contention of the petitioner that the respondent obtained award by playing fraud cannot be accepted, as there is no proof to show that only Pavalakodi is wife and other claimants are children of Pavalakodi and R.Selvaraj and they are only legal heirs

and first respondent herein. The petitioner was not vigilant enough to properly conduct the case. Now the petitioner cannot seek to recall the award in the present M.C.O.P, on the ground of fraud.

8. The learned Judge, rightly returned the application filed by the petitioner. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 28.09.2011.

9. Accordingly, the civil revision petition is dismissed. No costs.

02.08.2017

Index : Yes/No
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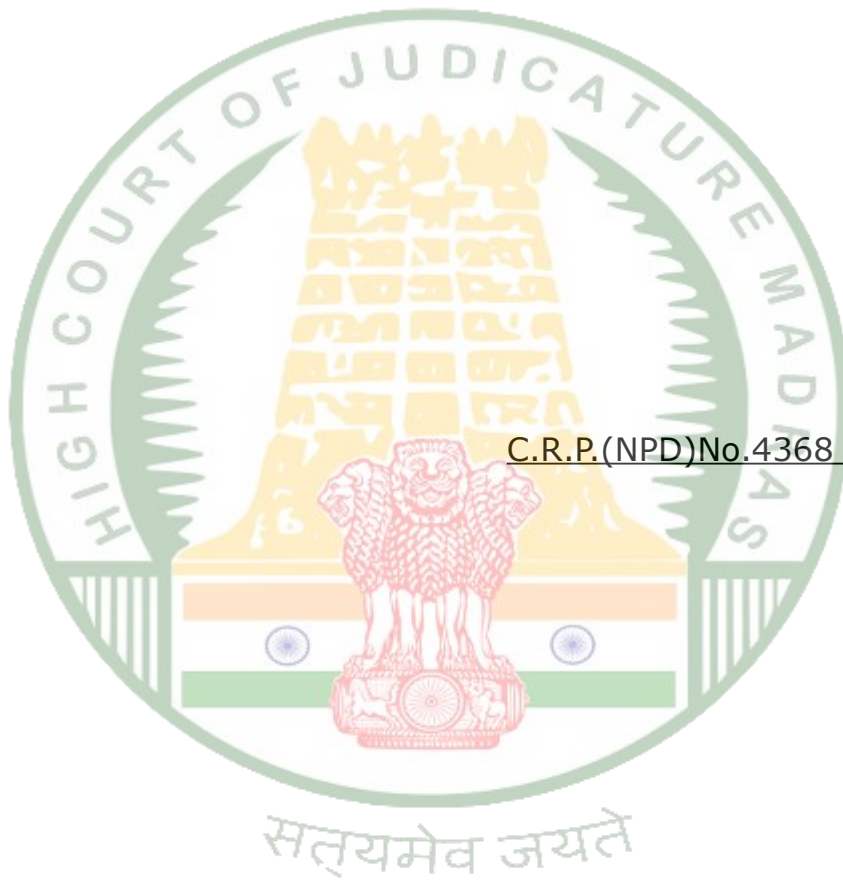
1. New India Assurance Company Limited
Branch Office, 12, New Hospital Road,
Gobi 638 452.

2. The Principal District Judge, Erode.

3. The Fast Track Court No.4,
Bhavani, Erode District

V.M.VELUMANI, J.

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