

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.28 and 29 of 2010

Kathiravan

.. Petitioner in
both CRPs.

Vs.

1.Raju

2.The Branch Manager
The New India Assurance Co. Ltd.
Ramanathapuram-623 501.

.. Respondents in
both CRPs.

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.10.2009 made in I.A.No.1266 of 2009 in I.A.No.366 of 2005 & I.A.No.562 of 2009 in I.A.No.365 of 2005 in M.C.O.P.No.257 of 2003 on the file of the District Court, Perambalur.

For Petitioner : Mr.S.Janarthanan

For R1 : Mr.C.Prabakaran

For R2 : No appearance

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decretal order dated 08.10.2009 made in I.A.No.1266 of 2009 in I.A.No.366 of 2005 & I.A.No.562 of 2009 in I.A.No.365 of 2005 in M.C.O.P.No.257 of 2003 on the file of the District Court, Perambalur.

2. The petitioner, who is the owner of the vehicle, is the first respondent, first respondent is the claimant and second respondent/Insurance Company is the second respondent in M.C.O.P.No.257 of 2003. The first respondent filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that was occurred on 28.08.2000.

3. According to the first respondent, the accident occurred only due to rash and negligent driving by driver of the vehicle belonging to the petitioner and insured with second respondent and hence, he claimed compensation from both the petitioner and second respondent. The petitioner remained exparte.

4. The second respondent filed counter denying the involvement of the TATA Sumo vehicle bearing Registration No.TN-65B-5170 in the accident and submitted that F.I.R. has been registered belatedly and the driver of the vehicle was not having valid license to drive the vehicle at the time of accident.

5. Before the Tribunal, the first respondent examined himself as P.W.1, the Doctor who gave treatment to the first respondent was examined as P.W.2 and marked 9 documents as Exs.P1 to P9. The second respondent examined two witnesses as R.W.1 & R.W.2 and marked two documents as Exs.R1 and R2.

6. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the TATA sumo and considering the nature of the injuries sustained by the first respondent, awarded a sum of Rs.85,490/- as compensation and further held that there was no insurance policy issued by the second respondent on the date of accident and directed the petitioner to pay compensation and exonerated the second respondent from its liability.

7. The petitioner filed two applications; one in I.A.No.365 of 2005 to condone the delay of 270 days in filing the petition to set aside the exparte decree and another in I.A.No.366 of 2005 to set aside the exparte decree passed on 10.02.2005. Both the applications were dismissed for default on 25.01.2007. Challenging the same, the petitioner filed two applications in I.A.Nos.562 of 2009 and 1266 of 2009 to restore the applications in I.A.Nos.365 and 366 of 2005. The Tribunal dismissed both the applications on the ground that the award is not an exparte award and the award was passed after contest.

8. Against the order of dismissal dated 08.10.2009 made in I.A.No.562 of 2009 in I.A.No.365 of 2005 and I.A.No.1266 of 2009 in I.A.No.366 of 2005, the present two civil revision petitions are filed by the petitioner/owner of the vehicle.

9. Though notice was served on the second respondent/insurance company and their name is printed in the cause list, there is no representation on behalf of them either in person or through counsel.

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

11. The learned counsel for the petitioner produced a copy of the policy issued by the second respondent in respect of the vehicle involved in the accident.

12. From the records, it is seen that the learned trial Judge failed to see that the award passed by the Tribunal against the petitioner is only an *exparte* award. In this circumstance, both the civil revision petitions are allowed by setting aside the award passed by the Tribunal only in respect of the issue as to whether there was a policy issued by the second respondent in respect of the vehicle involved in the accident on the date of accident. Both the petitioner and second respondent are permitted to let in evidence only with regard to the issue as to whether there was an insurance policy or not on the date of accident. The learned Judge has directed to consider the evidence if any, let in by the petitioner & second respondent with regard to insurance policy and decide the matter on merits as to whether the second respondent is also liable to pay

compensation as already fixed by the Tribunal and the parties are not entitled to let in any evidence with regard to quantum of compensation already awarded by the Tribunal and the Tribunal is directed to dispose M.C.O.P.No.257 of 2003 as expeditiously as possible in any event, not later than two months from the date of receipt of a copy of this order.

13. In the result, the Civil Revision Petitions are allowed. No costs.

Index : Yes/No

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To

The District Judge, Perambalur.

04.08.2017

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V.M.VELUMANI, J.

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