

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.3536 of 2009
and M.P.No.1 of 2009

United India Insurance Co. Ltd.,
Motor Third party Claims Offices,
II Floor, South India Co-op. Building,
38, Anna Salai, Chennai-2.

.. Petitioner

Vs.

1. Ayisha
2. Musthafa (Minor)
3. Kamarudeen (Minor)
4. Hayer Unnisa (Minor)

Heyar Umma (died)

(Minors represented by mother and next
friend Ayisha/1st respondent)

5. Millmore Engineering Company Pvt. Ltd.,
Rep.by its Managing Director,
144, Greames Road, Chennai-6.

6. V.Selvaraj

.. Respondents

Civil Revision Petition filed under Article 227 of the
Constitution of India, against the order dated 12.08.2009 made in

E.P.No.1543 of 2007 in M.C.O.P.No.2671 of 1991 on the file of the V Court of Small Causes, Chennai.

For Petitioner : Mr. M.B.Raghavan
For RR1 to 4 : Ms.Agalya for
Mr. A.Shanmugaraj
For R5 and R6 : Not ready notice

ORDER

The civil revision petition is filed against the order dated 12.08.2009 made in E.P.No.1543 of 2007 in M.C.O.P.No.2671 of 1991 on the file of the V Court of Small Causes, Chennai.

2. The petitioner is the third respondent, the respondents 1 to 4 are the claimants and the respondents 5 & 6 are the respondents 1 & 2 in M.C.O.P.No.2671 of 1991. The respondents 1 to 4 along with one Heyar Umma (deceased) as claimants filed the said M.C.O.P. claiming a sum of Rs.2,00,000/- as compensation for the death of one Mohammed Ubba in the accident that was occurred on 10.02.1990.

3. Pending M.C.O.P., the learned counsel appearing for the

respondents 1 to 4 and the deceased Heyar Umma/claimants made an endorsement in the claim petition on 25.01.1995 that they are giving up the claim against the third respondent/petitioner herein, as there is no insurance policy issued by the petitioner on the date of accident. While passing award, the Tribunal failed to take note of the endorsement made by the counsel for the respondents 1 to 4/claimants, passed an award against the respondents 5 & 6 and petitioner herein.

4. The petitioner filed M.P.No.742 of 1995 to reconsider the award and the fifth respondent also filed M.P.No.743 of 1995 to review the award on the ground that 5th respondent sold the vehicle prior to the accident. Both the review petitions were heard together and the learned Judge considering the endorsement made by the learned counsel for the respondents 1 to 4/claimants by order dated 02.08.1995 allowed the review petition in M.P.No.742 of 1995 filed by the petitioner and dismissed the review petition in M.P.No.743 of 1995 filed by the fifth respondent. Challenging the award dated 02.08.1995 made in M.P.No.743 of 1995, the fifth respondent filed C.M.A.No.202 of 1998 before this Court.

5. This Court by order dated 05.07.2006 dismissed the said C.M.A. The respondents 1 to 4/claimants filed E.P.No.1543 of 2007 by impleading the petitioner also as third respondent.

6. The Executing Court held that liability of the insurance company/third respondent/petitioner herein was confirmed in para 16 of the order passed by this Court in C.M.A.No.202 of 1998 and payment was not made and hence, ordered payment by 15.09.2009.

7. Against the said order dated 12.08.2009 made in E.P.No.1543 of 2007, the present civil revision petition is filed by the petitioner/Insurance Company.

8. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents 1 to 4 and perused the materials on record.

9. It is not disputed by the respondents 1 to 4/claimants that the counsel for respondents 1 to 4 made an endorsement that they are giving up the petitioner in the claim petition. It is also not in

dispute that after award was passed against the petitioner, the petitioner also filed review petition in M.P.No.742 of 1995 to reconsider the said award, the said review petition was allowed on 02.08.1995 and award against the petitioner was set aside. The Executing Court held that the liability of petitioner is confirmed in para 16 of the order passed by this Court in C.M.A.No.202 of 1998. This Court dismissed the CMA filed by the fifth respondent by confirming the award passed by the Tribunal and held that the petitioner failed to prove that there was no insurance policy at the time of accident and the petitioner is also liable to pay compensation.

10. The learned counsel for the petitioner by referring order dated 02.08.1995 made in M.P.No.742 of 1995 and award dated 09.03.1995 made in M.C.O.P.No.2671 of 1991 contended that there is no award directing the petitioner to pay compensation to the respondents 1 to 4. This amounts to there being no decree against the petitioner and E.P.No.1543 of 2007 against the petitioner is not maintainable.

11. The further contention of the learned counsel for the petitioner is that the finding of this Court in para 16 of its order dated 05.07.2006 made in C.M.A.No.202 of 1998 is only an observation and there is no direction to the petitioner to pay the compensation to the respondents 1 to 4. The Executing Court has not considered the modified award of the Tribunal and order of the learned Judge in review petition in M.P.No.742 of 1995 and based on the observation made by this Court in C.M.A.No.202 of 1998, passed an order of payment. This contention has considerable force. As on date, as per the order of this Court made in CMA, there was no award against the petitioner and there is no decree directing the petitioner to pay the compensation to the respondents 1 to 4/claimants.

12. In view of the order dated 02.08.1995 made in M.P.No.742 of 1995 and award of the Tribunal dated 09.03.1995 made in M.C.O.P.No.2671 of 1991, the order passed by the Executing Court in E.P.No.1543 of 2007 is set aside only in respect of the petitioner is concerned and the order is confirmed against the respondents 5 and 6.

13. In the result, the Civil Revision Petition is allowed to the extent as stated above. No costs. Consequently, connected Miscellaneous Petition is closed.

09.08.2017

Index:Yes/No

Speaking/Non-Speaking Order

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To

V Court of Small Causes

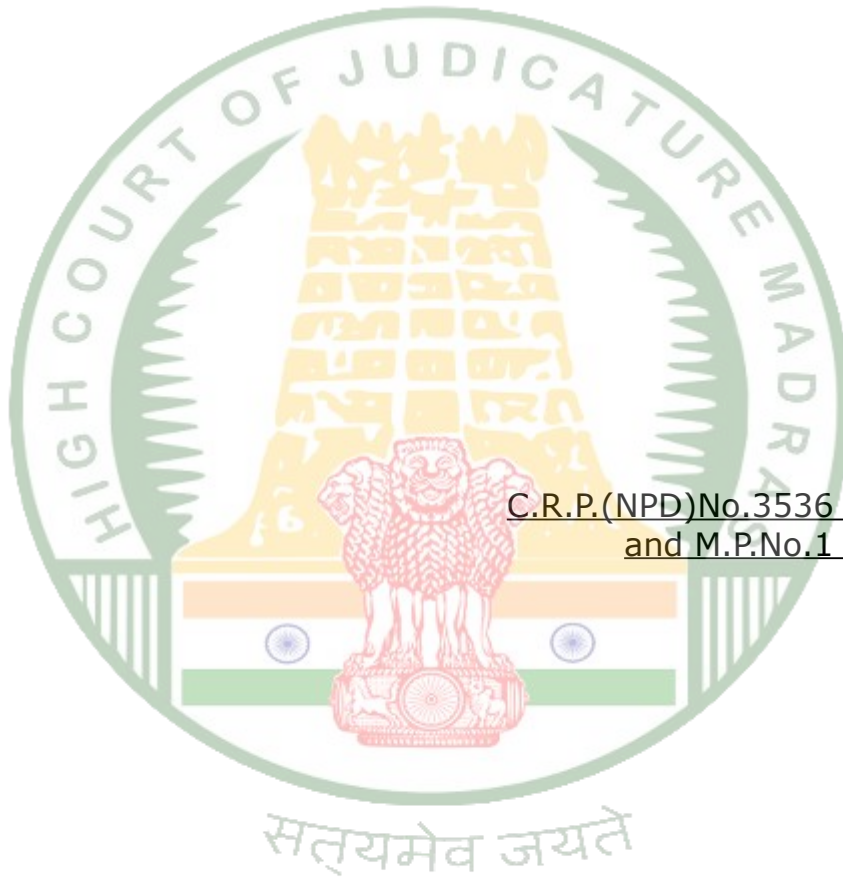
Chennai.



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V.M.VELUMANI,J.

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