

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.3350 of 2008
& M.P.No.1 of 2008

The Managing Director
Tamil Nadu State Transport Corporation.
Villupuram.

Petitioner

Vs.

1. Valarmathi

2.L.Nithiyanandam

3.The Divisional Manager
National Insurance Co. Ltd.,
Pondicherry.

Respondents

PRAYER : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 24.06.2008 made in I.A.No.2110 of 2007 in MCOP No.83 of 2005 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Cuddalore District, Cuddalore.

For Petitioner : Mr.K.J.Sivakumar

For Respondents : No appearance for
R1 & R3
Batta due reg. R2

ORDER

This Civil Revision Petition has been filed challenging the fair and decretal order dated 24.06.2008 made in I.A.No.2110 of 2007 in MCOP No.83 of 2005 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Cuddalore District, Cuddalore.

2. The petitioner is the third respondent, first respondent is the claimant and the second and third respondents are the first and second respondents in MCOP No.83 of 2005 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Cuddalore. The first respondent filed the above claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident occurred on 05.05.2004. The petitioner entered appearance in MCOP but failed to file counter statement and hence he was set exparte. Exparte award was passed against the petitioner on 12.02.2007 directing the petitioner to pay 50% and the respondents 2 & 3 to pay the balance 50% of the compensation awarded by the Tribunal. The petitioner filed I.A.No.2001 of 0207 to condone the delay of 162 days in filing the petition to set aside the exparte award.

3. According to the petitioner, the vehicle of the petitioner

Corporation was not involved in the accident and hence the petitioner arranged for investigation and there was a delay in getting the report of the investigator. Due to delay in getting the report, they could not file counter statement in time. The first respondent / claimant and third respondent/Insurance company filed separate counter in Interlocutory Application and submitted that the petitioner has not given any valid reason for condoning the delay of 162 days. In MCOP No.1901 of 2004 filed by the first respondent and others claiming compensation for the death of the husband of the first respondent, the petitioner filed counter statement and contesting the suit and hence prayed for dismissal of the interlocutory application.

4. Before the Tribunal, one Antony Vincent, Selection Grade Senior Assistant of the petitioner Corporation was examined as PW1 and no documents were marked. The respondent did not let in any oral or documentary evidence. The Tribunal, considering the averments in the affidavit, counter affidavit and materials on record, dismissed the application filed by the petitioner holding that the award was not an exparte award and it is a contested award and held that if the petitioner is aggrieved, he has to file only an appeal.

5. Against the said order dated 24.06.2008 made in I.A.No.2110 of 2007 in MCOP No.83 of 2005, the petitioner has come out with the present Civil Revision Petition.

6. Heard the learned counsel for the petitioner. Though respondents 1 & 3 entered appearance through their counsel, there is no representation on their behalf.

7. The learned counsel appearing for the petitioner submitted that the petitioner's vehicle is not responsible for the accident occurred on 05.05.2004 and the claim petition filed in MCOP No.1901 of 2004 by the first respondent/claimant and others for the death of the husband of the first respondent on the file of District Court, Cuddalore was dismissed against the petitioner and the entire liability was fixed on the respondents 2 & 3. The learned counsel for the petitioner also filed copy of the award dated 18.11.2005 passed in MCOP No.1901 of 2004 by the District Judge, Cuddalore. In the said MCOP filed by the first respondent and others for the death of the husband of the first respondent, the District Judge, Cuddalore has considered the contention and counter statement filed by the petitioner who contested the MCOP and dismissed the MCOP No.1901 of 2004 against the petitioner and

fixed the liability on the respondents 2 & 3.

8. From the materials on record, it is seen that in the present MCOP No.83 of 2005, the petitioner did not file any counter and contest the case. The award was passed fixing 50% liability on the petitioner. Two courts have given contrary award. In view of the fact that MCOP No.1901 of 2004 was dismissed against the petitioner and the entire liability was fixed on the respondents 2 & 3, the petitioner must be given opportunity to put forth their case on merits and also set right the contractual award.

9. For the above reasons, the order of the learned Judge dated 24.06.2008 made in I.A.No.2110 of 2007 in MCOP No.83 of 2005 is liable to be set aside and is accordingly set aside. The petitioner is directed to file counter statement within four (4) weeks from the date of receipt of copy of the order. The petitioner is at liberty to let in evidence with regard to the issue of its liability only. The learned Judge is directed to consider the issue whether the petitioner is also liable to pay the compensation or not, as held in the award dated 18.11.2005 made in MCOP No.1901 of 2004. The quantum of compensation awarded by the Tribunal is hereby confirmed. The Tribunal is directed to dispose of the MCOP No.83 of

2005 with regard to liability fixed on the petitioner, as expeditiously possible, not later than two months from the date of filing of counter statement by the petitioner, by issuing notice to the parties concerned immediately.

10. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
rgr

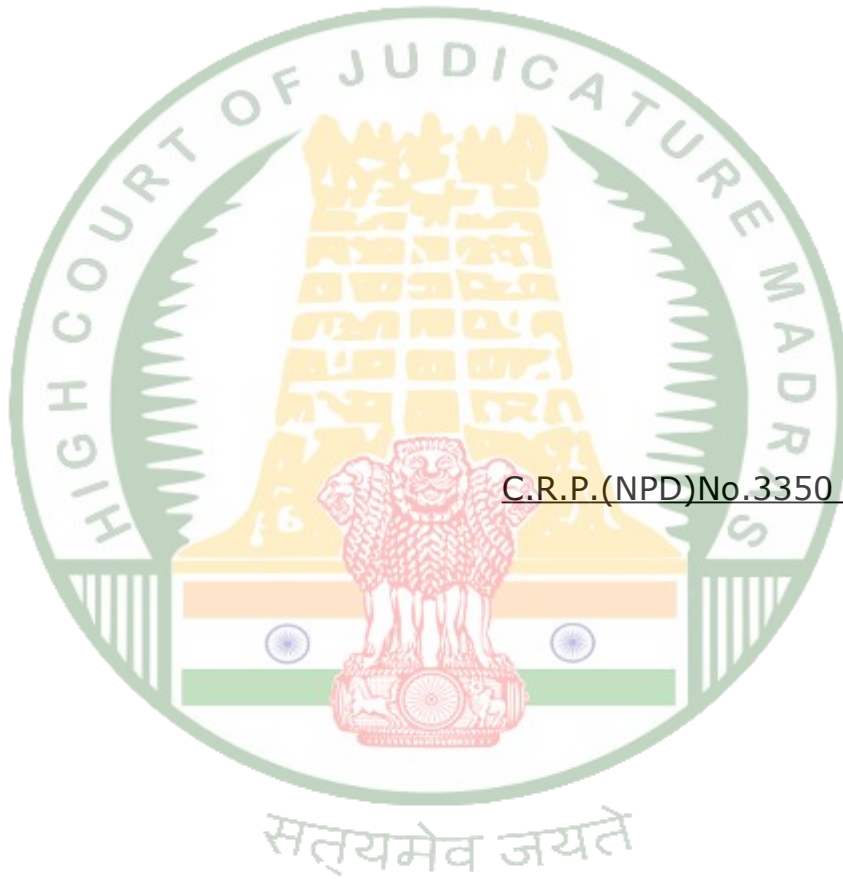
To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Cuddalore District,
Cuddalore.

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V.M.VELUMANI, J.

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