

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. NPD No.4078 of 2013
and M.P.No.1 of 2013**

1.Arukkani
2.Minor Kirubakaran
rep.by his natural guardian
Mother Arukkani

... Petitioners

Vs

1.National Insurance Company Ltd.,
by its Manager
No.3, Middletown Street,
Post Box No.9229, Kolkatta - 700 071.

2.Jaynathkumar

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order passed in I.A.No.1961 of 2012 in MCOP No.559 of 2007 dated 21.12.2012 on the file of the MACT/Principal District Judge, Namakkal.

For Petitioners : Mr.Ma.P.Thangavel

For Respondents : Mrs.N.B.Surekha
for R1

Not ready in notice
regarding R2.

ORDER

This Civil Revision Petition is filed against the fair and final order passed in I.A.No.1961 of 2012 in MCOP No.559 of 2007 dated 21.12.2012 on the file of the MACT/Principal District Judge, Namakkal.

2. The petitioners are claimants, the first respondent is the second respondent and the second respondent is the first respondent in MCOP No.559 of 2007 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Namakkal.

3. The petitioners filed claim petition claiming compensation of Rs.5,00,000/- for the death of one Ravi, husband of first petitioner and father of second petitioner. The first respondent herein filed counter statement and was contesting the MCOP. Subsequently the matter was referred to Lok Adalat and a compromise was arrived at between the petitioners and the first respondent. Both the petitioners and first respondent agreed for Rs.5,00,000/- to be paid to the petitioners by the first respondent. The said compromise memo was recorded and a Lok Adalat award was passed on 18.12.2011. The first respondent filed I.A.No.1961 of 2012 to set aside the compromise arrived at between the parties in the Lok Adalat on the ground that the vehicle

involved in the accident is not insured with the first respondent and xerox copy of the policy produced by the petitioners is a fake one. Considering the averments in the affidavit, counter affidavit and contention of the learned counsel for the first respondent that the policy produced by the petitioners is a fake one, the Tribunal allowed the application holding that the issue can be decided only after trial.

4. Against the said order dated 21.12.2012 in I.A.No.1961 of 2012 in MCOP No.559 of 2007, the present Civil Revision Petition is filed.

5. The contention of the learned counsel for the petitioners is that a compromise arrived at before the Lok Adalat cannot be set aside by the Tribunal or Civil Court as per Section 22 (E) of The Legal Services Authorities Act, 1987. The award of the permanent Lok Adalat is deemed to be a decree. The award can be sent to Civil Court for execution and can be challenged invoking Article 227 of the Constitution of India. The learned counsel for the petitioners relied on the judgment of the Hon'ble Apex Court reported in **2008 (2) SCC 660 [State of Punjab and anr. v. Jalour Singh and others]** wherein it has been held as follows -

12. It is true that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits.

6. Per contra, the learned counsel for the first respondent submitted that the policy produced by the petitioner is a forged one and it is for the petitioners to prove the genuineness of the policy. He further submitted that in the counter statement filed by the first respondent, they have reserved their right to file additional counter. The first respondent, with bonafide intention, not to protract the proceedings, agreed for the award as the second respondent, owner of the vehicle remained exparte before the Tribunal. The owner of the vehicle has not produced any policy and the copy of the policy was

produced only by the petitioners/claimants. He also relied on the judgment reported in **2013 (3) CTC 770 [Usharani and others v. Rajaram & others]** in support of his contention.

16. The limited circumstances under which the scope for interference is only when the Award is void ab initio, because the parties who entered into compromise, had no power to enter into the compromise or the compromise has been entered by playing a fraud, in such circumstances, the Award can be said to be void. Mahila Bhanwari Bai v. Kasmir Singh, AIR 2009 MP 232.

7. Heard the learned counsel for the petitioners as well as first respondent and perused the materials available on record.

8. The contention of the learned counsel for the petitioners that the Tribunal has no power to set aside the award of Lok Adalat has considerable force. The judgment relied on by the learned counsel for the petitioners is squarely applicable to the facts of the present case. Further, in the judgment of the Hon'ble Apex Court reported in **2017 (5) CTC 775 [Bharvagi Constructions & another v. Kothakapu Muthyam Reddy & others]** it has been held as follows -

37) So far as the second submission of learned counsel for the respondents is concerned, it also has no merit. In our view, the decision rendered in the case of *State of Punjab (supra)* is by the larger Bench (Three Judge) and is, therefore, binding on us. No efforts were made and rightly to contend that the said decision needs reconsideration on the issue in question. That apart, when this Court has laid down a particular remedy to follow for challenging the award of Lok Adalat then in our view, the same is required to be followed by the litigant in letter and spirit as provided therein for adjudication of his grievance in the first instance. The reason being that it is a law of the land under [Article 141](#) of the Constitution of India (see - *M. Nagaraj & Ors. Vs. U.O.I. & Ors.* 2006 (8) SCC 212). It is then for the writ court to decide as to what orders need to be passed on the facts arising in the case.

9. The Tribunal has not considered the contention of the learned counsel for the petitioners made in the counter affidavit and the scope of Section 22 (E) of The Legal Services Authorities Act, 1987 and the judgment of the Hon'ble Apex Court relied on by the learned counsel for the petitioners reported in **2008 (2) SCC 660**, referred *supra*. The said judgment of the Hon'ble Apex Court and the judgment reported in **2017 (5) CTC 775** cited *supra* are squarely applicable to the facts of the present case. The Tribunal has committed an irregularity and illegality in allowing the application. Hence, the order dated 21.12.2012 made in I.A.No.1961 of 2012 in MCOP No.559 of 2007 is liable to be set aside and it is hereby set aside.

10. In the result, this Civil Revision Petition is allowed. The first respondent/insurance company is directed to deposit the amount, as per the Lok Adalat award with accrued interest. No costs. Consequently, connected Miscellaneous Petition is closed.

30.10.2017

rgr

Index : Yes/No

To

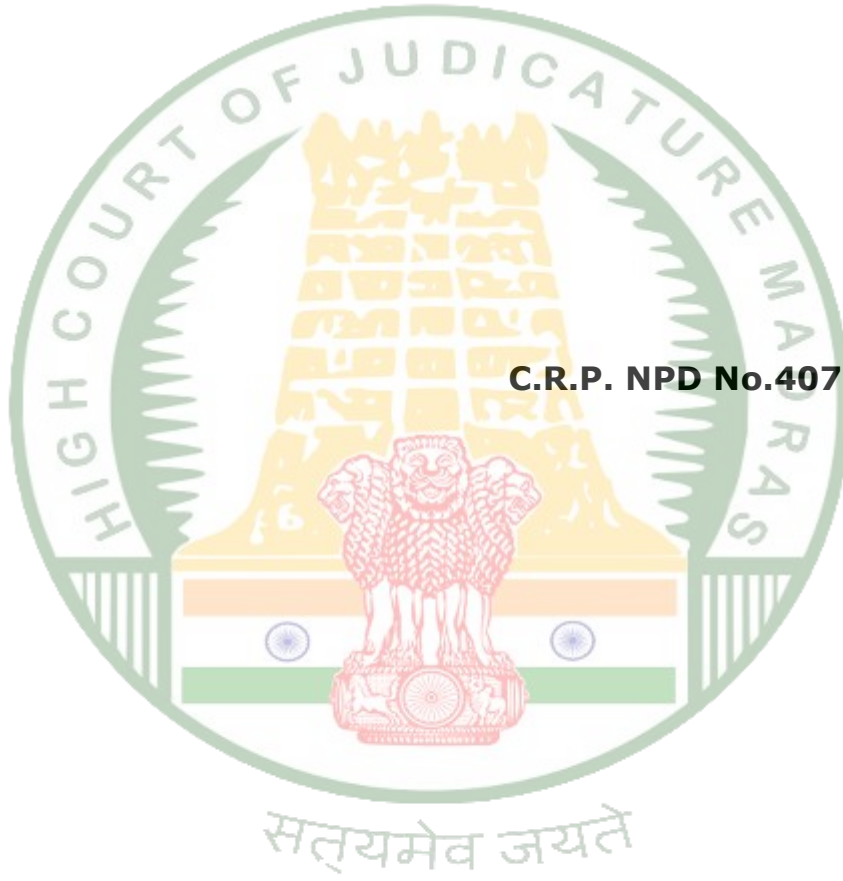
The Principal District Judge,
Motor Accident Claims Tribunal,
Namakkal.



WEB COPY

V.M.VELUMANI, J.

rgr



C.R.P. NPD No.4078 of 2013

WEB COPY 30.10.2017