



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) (NPD) No.2385 of 2017
and
C.M.P. (MD) No.11390 of 2017

Antony Xavier

... Petitioner

Vs.

1.Amalraj

... 1st Respondent

2.Royal Sundaram General Insurance Co., Ltd.,
No.46, Whites Road,
Chennai.

3.M/s.Mountain Spinning Mills,
No.97/1A, Kootutandadu,
Thoothukudi.

4.National Insurance Co., Ltd.,
No.175-A, Great Cotton Road,
Thoothukudi.

... Respondents 2 to 4

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the return order passed in Unnumbered I.A.SR.No.1644 of 2017 in M.C.O.P.No.392 of 2010 on the file of the Motor Accidental Claim Tribunal (1st Additional District Judge), Thoothukudi, dated 08.11.2017.

For Petitioner : Mr.P.M.Vishnuvarthanan

O R D E R

The petitioner has filed a petition in unnumbered I.A.SR.No.1644 of 2017 to set aside the ex-parte award granted in M.C.O.P.No.392 of 2010 along with the petition to condone the delay in filing the above petition. It has not been numbered by the Motor Accident Claims Tribunal. Against which, the petitioner is before this Court for a direction to number the petition.

2. The grievance of the petitioner is that in the accident which had taken place, one person was injured and the other person died and in the fatal case in M.C.O.P.No.105 of 2010, an award was passed holding the Insurance Company and the owner of the vehicle liable and when the learned Judge passed the ex-parte award, that aspect was not considered by the learned Judge. The petitioner



underwent three surgeries and he was suffering from kidney problem and therefore, he was not able to appear before the Tribunal and hence, ex-parte order was passed. Therefore, he has filed a petition to condone the delay and to set aside the ex-parte order.

3. In support of his contention, learned counsel for the petitioner relied on a judgment of this Court reported in 2010 (1) MWN (Civil) 413 (S.Chinnathai v. K.C.Chinnadurai), wherein, in para-10, it has been held as follows:

"10. When the Civil Court decides an application filed under provisions of Order 26, Rule 10-A of the Civil Procedure Code, the Court has to decide as to whether the said Application is necessary for the purpose of deciding the case. While deciding the said Application, the Civil Court cannot reject the Application only on the ground of delay, until or unless it comes to the conclusion that the Application lacks bona fides or the same has been filed with the sole view to protract the proceedings.

4. Considering the facts and circumstances of the case, this Court feels that ends of justice would be met, if a direction is given to the Motor Accidents Claims Tribunal (1st Additional District Judge), Thoothukudi, to number the above said two petitions and to hear the same on merits. Accordingly, the Motor Accidents Claims Tribunal (1st Additional District Judge), Thoothukudi is directed to number the same and pass orders on merits and in accordance with law, after affording an opportunity of hearing.

5. With the above direction, the Civil Revision Petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accidents Claims Tribunal,
(1st Additional District Judge),
Thoothukudi.

2. The Record Keeper,
E.R.Section
Madurai Bench of Madras High Court,
Madurai. (Two Copies)

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12.12.2017