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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(MD)No.833 of 2018 and
C.M.P.(MD)No.3681 of 2018

The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Bye Pass Road, Madurai. ... Petitioner/Petitioner/
3rd Respondent

Vs.

1. Pankajam
2. Rengaprasanth
3. Rengammal ... Respondents/
Respondents 1 to 3/Petitioners
4. Surendaran

5. The Divisional Manager,
Shri Ram General Insurance Co. Ltd.,
2nd Floor, Suguna Store Buildings,
Anna Nagar, Madurai. ... Respondents 4 &5/
Respondents 4 &5/Respondents 1 & 2

Prayer: Civil Revision petition is filed under Article 227 of the Constitution of India, to direct the learned I Additional District Judge, Madurai, to take on file the application in I.A.SR.No.2862 of 2016 in M.C.O.P.No.1416 of 2010 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Madurai.

For Petitioner : Mr.K.Gokul

O R D E R

This Civil Revision petition is filed for issuing a direction to the learned I Additional District Judge, Motor Accidents Claims Tribunal, Madurai, to take on file the application in I.A.SR.No.2862 of 2016 in M.C.O.P.No.1416 of 2010.

2. Heard the learned counsel appearing for the petitioner.

3. The Revision petitioner who is the Transport Corporation has filed an application in I.A.SR.No.2862 of 2016 in M.C.O.P. No.1416 of 2010 before the learned I Additional District Judge, Madurai, challenging the ex-parte order, dated 18.01.2016 passed in M.C.O.P.No.1416 of 2010 filed by the claimants. Therefore, this

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Court, in the order dated 12.04.2018, directed the learned I Additional District Judge, Madurai, to file a report for returning the application. Pursuant to the order passed by this Court, the learned Judge, in his explanation dated 17.04.2018, stated that when the petition was taken up for enquiry, it was fully contested by the second respondent, namely, Shriram General Insurance Company. While so, the other two respondents remained exparte. After full fledged enquiry, the order dated 18.01.2016 was passed by the trial Court on merits after full trial. Therefore, the application filed by the petitioner under Order 9 Rule 13 and Section 151 of C.P.C., to set aside the ex-parte decree, dated 18.01.2016 was returned questioning the maintainability of the petition.

4. The second respondent including the petitioner was remained ex-parte. When the petitioner was set ex-parte in the main case which was admitted by the learned Judge and the application was filed in I.A.S.R.No.2862 of 2016 in M.C.O.P.No.1416 of 2010 to set aside the ex-parte decree, it is the duty of the learned Judge to number the application on merits. This Court is of the absolute view that the party was set ex-parte in the main case even after the full fledged enquiry, the party is entitled to file an application under Order 9 Rule 13.

5. The petitioner who is the respondent in M.C.O.P.No.1416 of 2010 was set ex-parte and ex-parte decree was passed against the petitioner on 18.01.2016. Therefore, the petitioner is entitled to file an application under Order 9 Rule 13 of C.P.C., and the Court should be entertained to number the application.

6. In the result, the Civil Revision petition is allowed and the order passed by the learned I Additional District Judge, Motor Accidents Claims Tribunal, Madurai, in I.A.SR.No.2862 of 2016 in M.C.O.P.No.1416 of 2010, dated 18.01.2016, is set aside. The petitioner is directed to re-present the said application within a period of one week from the date of receipt of a copy of this order and on such receipt of the said application along with this order, the learned Judge is directed to number the said application within a period of one week thereafter, if it is otherwise in order. On numbering the said application, the learned Judge is directed to dispose of the said application within a period of two months thereafter, after giving notice to both parties. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

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To

1. The I Additional District Judge,
   Motor Accidents Claims Tribunal,
   Madurai.

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

+ 1 CC TO Mr.K.GOKUL, ADVOCATE IN SR No. 62673

PMU
TE/SV-MMS/SAR-3 : 23/05/2018 : 3P/5C

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