



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.07.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.(MD).No.474 of 2018

S.Maharaja .. Petitioner/Petitioner/Petitioner

Vs.

1.G.Ponnusamy

2.The United India Insurance Company,
Represented through its Divisional Manager
Zonal Office,
No.7A, West Veli Street,
Madurai - 1. .. Respondents/ Respondents/Respondents

Prayer:- The Civil Miscellaneous Appeal is filed under Order XLIII Rule 1 of Civil Procedure Code, 1908, against the fair and decreetal order dated 17.11.2017 made in I.A.No.166 of 2016 in M.C.O.P.No.326 of 2009 on the file of the 1st Additional Sub-Court, Madurai, Melur Camp.

For Appellant : Mr.A.Arumugam

For R2 : Mr.J.S.Murali

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the fair and decreetal order dated 17.11.2017 made in I.A.No.166 of 2016 in M.C.O.P.No.326 of 2009 on the file of the 1st Additional Sub-Court, Madurai, Melur Camp.

2. The facts, which are necessary for disposal of this appeal, are as follows:

Owing to an accident that took place on 30.10.2007, the appellant, who is a Driver, has become a permanently disabled person. Though he filed a Claim Petition in M.C.O.P.No.326 of 2009 claiming compensation of Rs.1,50,000/-, due to his non-appearance before the court below on 11.03.2016, the Claim Petition was dismissed. Thereafter, the appellant filed I.A.No.166 of 2016 under Order 9 Rule 9 C.P.C for restoration of the Claim Petition. The learned 1st Additional Subordinate Judge, Madurai, Melur Camp, dismissed the said application stating that the appellant is not interested in prosecuting the appeal filed in the year 2009 and therefore, the court has lost its hope that the appellant would prosecute the petition, in the event of restoration of the Claim



Petition.

3. The learned counsel for the appellant submitted that the court below ought to have adopted a liberal approach in dealing with the application filed under Order 9 Rule 9 C.P.C, 1908, for restoration of the Claim Petition.

4. The learned counsel appearing for the second respondent submitted that the court below has rightly dismissed the Interlocutory Application rejecting to restore the Claim Petition, which was dismissed for default.

5. This Court has given its anxious consideration to the submissions made by the learned counsel for the appellant and the learned counsel appearing for the second respondent. This Court has also perused the materials available on record.

6. Upon hearing the submissions made on either side and on going through the records, it is seen that the accident is not disputed. Admittedly, the appellant has sustained multiple grievous injuries all over the body. A surgery in his right leg was done. Doctors advised that the appellant needs one more surgery in future and he became a permanently disabled person. After the accident, he could not function as a Driver. It is also averred that the appellant is the only bread winner of his family. Normally, a person, who is facing such circumstance, would not have wantonly restrained in prosecuting the Claim Petition. The fault of the Lawyer should not be attributed on a poor claimant. No doubt, it is the duty of the claimant to verify from his Advocate as to the status of the case. Advocacy of a case by the Advocate is only for the welfare of the client.

7. Considering the facts and circumstances of the case, to meet the ends of justice, it would be appropriate to allow the appeal on condition that the appellant will not claim any interest for the defaulted period. Accordingly, the fair and decreetal order passed in I.A.No.166 of 2016 in M.C.O.P.No.326 of 2009 on the file of the 1st Additional Sub-Court, Madurai, Melur Camp is set aside. Consequently, M.C.O.P.No.326 of 2009 is restored to file. The learned 1st Additional Subordinate Judge, Madurai, Melur Camp, is directed to dispose of M.C.O.P.No.326 of 2009 within a period of four months from the date of receipt of a copy of this judgment.

8. In the result, this Civil Miscellaneous Appeal is allowed.
No costs.

Sd/

Assistant Registrar(Writs)

/True copy/



To,
The 1st Additional Subordinate Judge,
Madurai, Melur Camp.

Copy to:

1. The Divisional Manager,
United India Insurance Company,
Zonal Office, No.7A, West Veli Street,
Madurai - 1.
2. The Record Keeper,
V.R. Section, Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.A.Arumugam, Advocate, SR.No. 74795
+1cc to Mr.J.S.Murali, Advocate, SR.No. 75127

C.M.A. (MD) .No.474 of 2018
25.07.2018

CM
KK/TE/RP/14.08.2018/SAR-3/3P-7C