

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1954 of 2015
and
M.P.No.1 of 2015

K.Perumal

.. Appellant

Vs.

1. P.Murugesan
2. The New India Assurance Company Ltd.,
375, Anna Salai
Canara Bank - 2nd Floor
Saidapet
Chennai - 600 015.

.. Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.09.2014 made in I.A.No.408 of 2014 in M.C.O.P.No.903 of 2007 on the file of the Special Sub Court, No.1, (Motor Accident Claims Tribunal), Salem.

For appellant : Ms.Zeenath Begum

For R1 : Mr.R.Marudhachala Murthy

For R2 : Mr.G.Udayashankar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order of dismissal dated 05.09.2014 made in I.A.No.408 of 2014 in M.C.O.P.No.903 of 2007 on the file of the Special Sub Court, No.1, (Motor Accident Claims Tribunal), Salem.

2.The appellant is the 1st respondent in M.C.O.P.No.903 of 2007 on the file of the Special Sub Court, No.1, (Motor Accident Claims Tribunal), Salem. The 1st respondent filed the said claim petition, claiming a sum of Rs.14,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.02.2007. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to

rash and negligent driving by the driver of the lorry belonging to the appellant and directed the appellant to pay a sum of Rs.2,02,000/- as compensation to the 1st respondent.

3. According to the appellant, he has not received any summons with regard to filing of M.C.O.P and hearing date. He came to know about the award passed in M.C.O.P. only when he received notice of calling from the counsel for the 1st respondent on 21.05.2011 to pay the award amount. Immediately, he has filed I.A.No.408 of 2014 to set aside the exparte award on the ground that he is residing in Athanoorpatti Village, Salem District, while the summon in M.C.O.P was sent to Athanoorpatti Village, Namakkal District. The appellant also stated in the said I.A that already he sold the lorry in question to one Anbalagan and the appellant was not the owner on the date of accident.

4. The counsel for the 1st respondent made endorsement in the application that I.A may be ordered on heavy terms.

5. The 2nd respondent-Insurance Company filed counter affidavit and opposed the said application. According to the 2nd respondent, the appellant was aware of the claim petition and he has received the notice sent by the 2nd respondent, pending claim petition and therefore, prayed for dismissal of the application.

6. Before the Tribunal, the appellant examined himself as P.W.1 and one R.Renganathan as P.W.2 and marked 5 documents as Exs.P1 to P5 and four Court documents as Exs.X1 to X3 and Ex.C1. The 2nd respondent-Insurance Company examined one S.Joseph Dominic as R.W.1 and marked 4 documents as Exs.R1 to R4.

7. The Tribunal considering the averments in the affidavit, counter affidavit and oral and documentary evidence, let in before it, dismissed the application on the ground that the appellant was aware of the claim petition and has approached the Court only when an award was passed directing the appellant to pay the compensation and 2nd respondent was exonerated from its liability.

8. Against the said order of dismissal dated 05.09.2014 made in I.A.No.408 of 2014 in M.C.O.P.No.903 of 2007, the appellant has come out with the present appeal.

9. Heard the learned counsel appearing for the appellant, 1st respondent as well as the 2nd respondent-Insurance Company and perused the materials available on record.

10.From the materials on record, it is seen that the residence of the appellant is in Athanoorpatti Village, Valappady Taluk, Salem District. In the claim petition, it has been mentioned that the appellant is residing in Namakkal District and notices were sent to the address at Namakkal District. It is pertinent to note that the counsel for the 1st respondent as well as the 2nd respondent sent their notices to the appellant at Salem District. The Tribunal failed to consider this aspect and considering the evidence let in before the Tribunal, held that the appellant was aware of M.C.O.P proceedings. It is well settled that the Courts must elaborately consider the application to condone the delay and also application to set aside the exparte decree or to restore the proceedings. The Principle is that a party must be given an opportunity to put forth their case on merits and he should not be dragged on in the proceedings. From the materials on record, it is seen that the summons in M.C.O.P was not sent to the appellant at Salem District and notice after award was sent by the counsel for the 1st respondent to address in Salem District. In view of the same, it will be in the interest of justice that an opportunity must be given to the appellant to put forth his case on merits.

11.In view of the same, the appeal is allowed. The award passed by the Tribunal is set aside and M.C.O.P is remanded to the Tribunal to decide afresh. The appellant is directed to file counter statement within a period of four (4) weeks from the date of receipt of a copy of this judgment. On filing such counter statement, the Tribunal is directed to dispose of the M.C.O.P on merits and in accordance with law, within a period of three months thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

12.The learned counsel appearing for the 2nd respondent-Insurance Company submitted that the appellant has stated that the vehicle was insured with the National Insurance Company and it is open to the claimant to implead the National Insurance Company, the insurer of the offending vehicle. No costs.

gsa

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

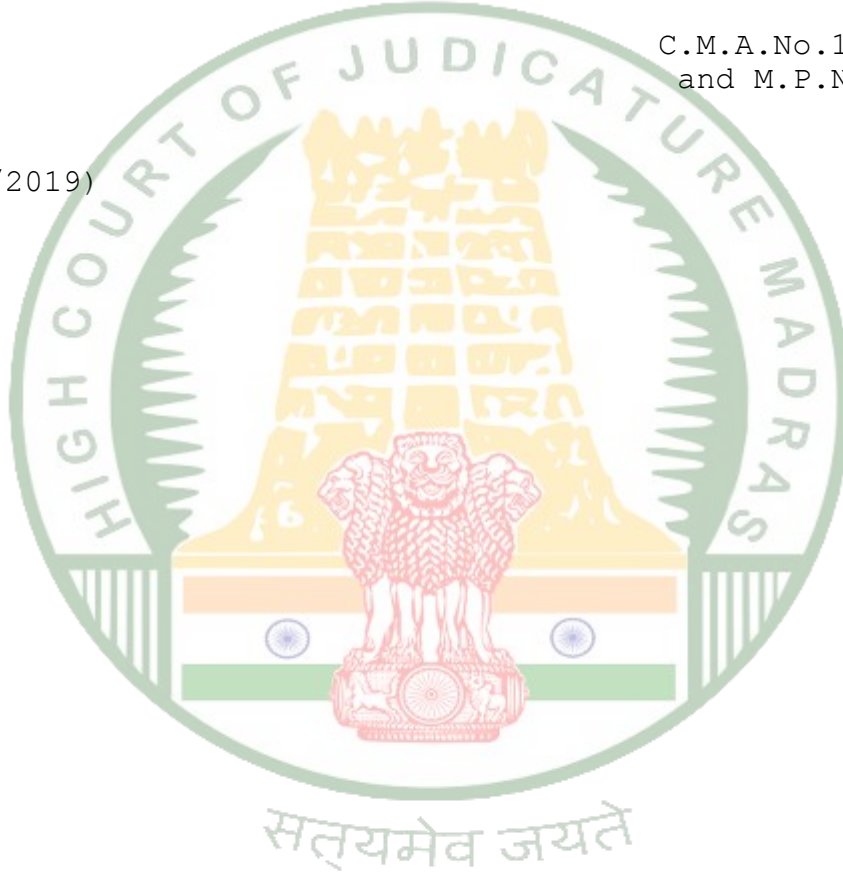
1.The Special Subordinate Judge No.1,
(Motor Accident Claims Tribunal), Salem.

+1cc to Mr.Udayasankar, Advocate, S.R.No.6861

+1cc to M/s.Zeenath Begum, Advocate, S.R.No.7115

C.M.A.No.1954 of 2015
and M.P.No.1 of 2015

PP (CO)
KAK (07/02/2019)



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