

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2019

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.1223 of 2015

and

M.P.No.1 of 2015

Natarajan

... Petitioner

VS

Madhan

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 23.10.2013 passed in I.A.No.2909 of 2012 in M.C.O.P.No.353 of 1995 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Judge) at Sankari.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.A.K.Kumarasamy

ORDER

The present Civil Revision Petition is directed against the fair and decretal order dated 23.10.2013 passed in I.A.No.2909 of 2012 in M.C.O.P.No.353 of 1995 by the Motor Accident Claims Tribunal (Additional Subordinate Judge), Sankari.

2. The petitioner the owner of the Ambassador car bearing Regn.No.TMF 8436 involved in an accident with a bullock cart. According to the petitioner, the injured persons traveling on the bullock cart were compensated as per the decision of the Panchayatars on 11.11.1994 before the Sankari Police Station.

3. Thereafter, the respondent filed a claim petition before the Motor Accidents Claims Tribunal, Sankari vide C.M.A.No.353 of 1995, for a compensation of Rs.50,000/- for the injuries suffered. The petitioner was arrayed as the second respondent in M.C.O.P.No.353 of 1995.

4. In the said proceedings, the petitioner also filed a counter denying liability and further stated that the compensation was paid to the injured persons as per the decision of the Panchayatars on 11.11.1994.

5. Since, the petitioner was absent he was ex parte decree on 07.09.2000. Pursuant to the ex parte fair and decretal order dated, the respondent filed R.E.P.No.64 of 2007 before the 1st Additional Subordinate Judge, Salem to execute the ex parte decree. The petitioner appeared and undertook to pay the claim amount. Since,

the petitioner did not make payment, R.E.P.No.5 of 2011 was filed for civil arrest of the petitioner.

6.Under these circumstances, the petitioner filed I.A.No.2909 2012 under Section 5 of the Limitation Act, for condoning the delay of 4471 days in filing application under Order 9 Rule 13 of CPC in M.C.O.P.No.353 of 1995. The application was contested by the respondent.

7.The learned counsel for the petitioner submitted that during the proceedings, the petitioner has already deposited a sum of Rs.50,000/- and further sum of Rs.25,000/- during the pendency of the present Civil Revision Petition.

8.The learned counsel further submitted that the petitioner has suffering from vertigo therefore he could not attend the hearing when he was set exparte. Therefore, prayed for condoning the delay of 4471 days in filing the application to set aside the exparte decree.

9.Per contra, the learned counsel for the respondent submits that the award came to be passed after the petitioner was set exparte on 07.09.2000. Notice was issued calling upon the

petitioner to pay the amount but failed to pay and therefore the petitioner deserves no sympathy and has dragged the proceedings. Further, the reasons given in the affidavit filed in support of the application to condone the delay in filing the application under Order 7 Rule 13 of CPC was bareft of details and therefore the application was rejected properly.

10.I have considered the records and the rival submissions of the both sides. Pursuant to exparte order in M.C.O.P.No.353 of 1995 dated 07.09.2000, the respondent attempted to execute the exparte deree twice. In R.E.P.No. 64 of 2007, the petitioner give an undertaking to pay the amount. Recording the same, R.E.P.No.64 of 2007 was closed.

11.However, the petitioner did not pay the award amount. Under the circumstances, R.E.P.No.5 of 2011 was filed. The petitioner appeared through his counsel and undertook to pay the award amount. However, remained absent thereafter and was therefore set exparte. Therefore, civil imprisonment was ordered. It is at that stage the petitioner filed I.A.No.2909 of 2012 to condone the delay of 4471 days to set aside ex parte decree.

12. Though, the reasons given in the application filed for condoning the delay are insufficient, the petitioner has proved his bonafide by depositing the award amount before the Claims Tribunal during the 2nd execution proceedings and further amount of Rs.25,000 during the pendency of the present Civil Revision Petition pursuant to order dated 26.03.2015.

13. From the records it is evident that the exparte fair and decretal order dated 07.09.2000 is not reasoned. The respondent was required to prove the extent of injury and a proper assessment ought to have been made by the Motor Accident Claims Tribunal before awarding the claim amount of Rs.50,000/-.

14. As there is no proper determination of the amount of compensation and the award having been passed mechanically merely because the petitioner was absent, the exparte award passed by the Motor Accident Claims Tribunal requires to be interfered.

15. Therefore, I am inclined to allow the present Civil Revision

Petition subject to the petitioner paying a sum of Rs.5000/- as cost

C.SARAVANAN, J.

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to the respondent by depositing the amount to the credit of the above case before the lower court within a period of four weeks from the date of receipt a copy of this order.

16.On such deposit, the M.C.O.P.No.353 of 1995 shall be taken up by Motor Accident Claims Tribunal, Sankari and decided on merits as per law. The respondent shall be entitled to a payment and of the cost. The Motor Accident Claims Tribunal, Sankari shall pass an order within a period of four months from date of receipt of a copy this order.

17.The present civil revision petition is allowed with the above observations. Consequently, connected Miscellaneous Petition is also closed.

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19.06.2019

Index :Yes/No
Internet :Yes/No
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To

- 1.Motor Accident Claims Tribunal
- 2.The Section Officer, V.R.Section,
High Court, Madras.

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