

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **16.09.2019**

CORAM

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.(NPD)No.4006 of 2014
and
M.P.No.1 of 2014

M/s.Prem Steels Traders
represented by its Proprietor
A.Prem Nivas

.. Petitioner

vs.

1.Damodharan
2.Palani
3.Kosala
4.Lakshmi
5.Suresh

6.The Divisional Manager,
The National Insurance Co., Ltd.,
Third Party Claims Cell,
No.225, Gandhi Road,
Kancheepuram.

.. Respondents

PRAYER: Criminal Revision Petition filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition and set aside the Fair and Final order dated 28.08.2014 made in I.A.No.12 of 2014 in M.C.O.P.No.706 of 2010 on the file of District Judge, District Court No.II, Kancheepuram.

For Petitioner : Mr.R.Muniyapparaj

For R1 to R5 : Mr.S.S.Swaminathan

For R6 : No appearance

ORDER

The petitioner herein is the first respondent in M.C.O.P.No.706 of 2014 on the file of the Motor Accident Claims Tribunal / the learned District Judge, District Court No.II, Kancheepuram (hereinafter called as "Court"). This Civil Revision Petition is directed against the order passed in I.A.No.12 of 2014 in M.C.O.P.No.706 of 2014 on the file of the afore referred Court.

2.Before the Trial Court, the respondents 1 to 5 herein filed a claim application under Section 166 of the Motor Vehicles Act and claiming compensation for the death of the first respondent's wife. In the said claim application, the petitioner herein, who is the owner of the vehicle alleged to be

caused accident, was arrived as first respondent. The insurer of the said vehicle was added as second respondent.

3.The claim Tribunal passed an award of Rs.8,51,000/- (Rupees Eight Lakhs Fifty One Thousand only) as a compensation to the death of the first respondent's wife. In respect to the liability, the claim Tribunal has held that since the driver of the vehicle who caused the accident is not having any valid license, the first respondent is liable to pay the entire compensation.

4.In fact, the said award has been passed by the Tribunal, after putting the respondent as ex-parte. Challenging the same, the petitioner filed an application under Section 5 of the Limitation Act in filing the petition to set aside the ex-parte order which was passed on 16.02.2012. The Presiding Officer, Claim Tribunal, in his order dated 28.08.2014 allowed the petition with condition to deposit half of the award amount ie., Rs.4,25,500/- into the Court within 45 days ie.,12.10.2014.

5. Aggrieved over the said finding, the petitioner is before this Court. In general, Section 5 of the Indian Limitation Act, 1963 is an enabling provision to assist the litigants who failed to do an act, within the prescribed time period as originally fixed under various enactments. Of course, if the petitioner is not appeared before the Claim Tribunal after receiving the notice, the fault is only with the petitioner. However, in order to decide this grievance redressed by the petitioner, it is necessary to see the background of the case decided by the claim Tribunal. According to the petitioner, at the time of accident, the insurance policy is in force and the same has been availed from the sixth respondent/insurer herein.

6. In this aspect there was no denial on the side of the claimants. But the learned Presiding Officer, Claims Tribunal, at the time of passing award has held that since the vehicle responsible for the accident was driven by the driver who is not having a valid driving license, only the owner is liable to pay the compensation fixed by the Tribunal. In fact, the said

observation held by the claim Tribunal is against the principle of pay and recovery. The Hon'ble Apex Court has already decided in various cases that if the vehicle owner violated the policy conditions, it is necessary to direct the insurer to pay the award amount with a liberty to recover the same from the vehicle owner. Instead of that the claim Tribunal passed an award only against the vehicle owner who is the petitioner herein. So the award passed by the claim Tribunal is entirely erroneous. In the said circumstances, the petitioner has approached this Court with this petition.

7.It is borne in mind that at the time of admitting the Civil Revision Petition, the petitioner herein deposited a sum of Rs.2,00,000/-(Rupees Two Lakhs only) towards the portion of award passed by the claim Tribunal. It is true that for filing this type of application, the petitioner has shown sufficient cause for condoning the delay. But in the affidavit filed in support of this petition, he has blamed and throw the fault only on his advocate. However, I am of the opinion that a liberal approach is necessary while considering the application to condone the delay since there must be a right of one appeal to litigant especially in the case where the delay is not extraordinary. In this application, the petitioner prayed to condone

the delay of only 663 days. In fact, the said delay is not a huge one. More than that already a portion of the award amount was deposited and lying with the Court account. Further in fixing the liability, the claim Tribunal passed an erroneous order.

8. So in all aspects, in order to render the substantial justice, it is not necessary to insist the petitioner to deposit the entire award amount of Rs.8,51,000/-. If at the date of accident, the policy issued by the sixth respondent is in force, absolutely, the petitioner is not having any liability to pay the compensation amount to the respondents 1 to 5. Therefore, compelling him to deposit the entire amount is not necessary. Hence, the order passed by the Claim Tribunal is modified as the petition filed by the petitioner is allowed on deposit of Rs.2,00,000/-(Rupees Two Lakhs only) which has already been deposited by the petitioner. Hence, further deposit is not necessary. The Claim Tribunal is directed to dispose M.C.O.P.No.706 of 2010 within a period of three months from the date of receipt of a copy of this order.

9.With this direction, this Civil Revision Petition is allowed.
No costs. Consequently, connected miscellaneous petition is closed.

16.09.2019

Index : Yes/No
Internet : Yes/No
Speaking order / Non- speaking order

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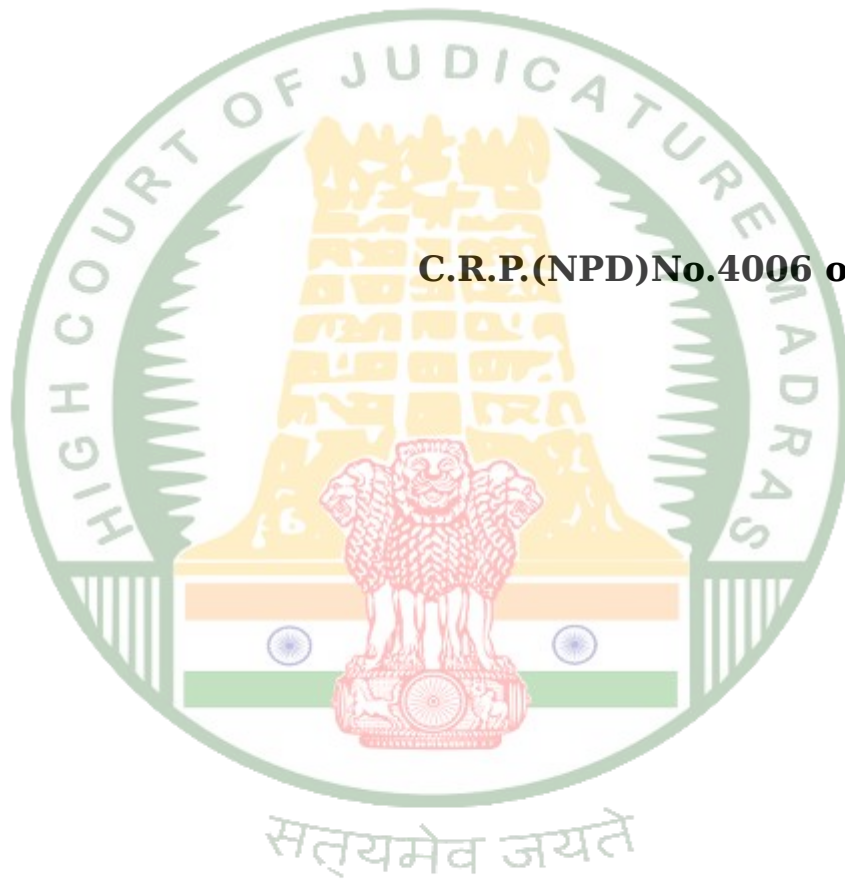
To

- 1.The Principal District Munsif, Poonamallee.
- 2.The Subordinate Judge, Poonamallee.
- 3.The Public Prosecutor,
High Court of Madras,
Madras.

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R.PONGIAPPAN,. J.
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