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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 05.07.2018

ORDERS PRONOUNCED ON : 17.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRP.NOS.3347 & 3348 OF 2017

G.Shanmugavel ... Petitioner in both CRPs/
Respondent/Petitioner/
Decreeholder/Petitioner

Vs

The National Insurance Company Ltd.,
Divisional Office -I,
SRN Colony, Saradha College Road,
Salem.

... Respondent in both CRPs/
Petitioner/Respondent/
Judgment Debtor/Respondent

PRAYER IN C.R.P.No.3347 of 2017:

Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 25.01.2017 made in R.E.P.No.63 of 2015 in M.C.O.P.No.176 of 2008 (on the file of Motor Accidents Claims Tribunal (Subordinate Court), Attur), passed by the Subordinate Court, Attur.

PRAYER IN C.R.P.No.3348 of 2017:

Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 25.01.2017 made in R.E.A.No.271 of 2016 in R.E.P.No.63 of 2015 in M.C.O.P.No.176 of 2008 (On the file of the Motor Accidents Claims Tribunal (Subordinate Court), Attur), passed by the Subordinate Court, Attur.

For Petitioner : Mr.C.Sivakumar

For Respondent : Notice Served - No Appearance



COMMON ORDER

The revision petitioner is the petitioner in M.C.O.P.No.176 of 2008 and the execution petition in R.E.P.No.63 of 2015 and the respondent in R.E.A.No.271 of 2016 in R.E.P.No.63 of 2015. The respondent herein is the second respondent in the said M.C.O.P.No.176 of 2008 in R.E.P.No.63 of 2015 on the file of the Accident Claims Tribunal, the learned Subordinate Judge, Attur, Salem and the petitioner in R.E.A.No.271 of 2016.

2 It could be seen from the records, the revision petitioner herein met with an accident on 25.05.2008. Therefore, he filed a claim petition in M.C.O.P.No.176 of 2008 before the Motor Accident Claims Tribunal, Attur, against the owner and the insurer of the offending vehicle.

3 After service of summons, the First respondent therein, who is the owner of the vehicle did not appear before the Claims Tribunal. The second respondent therein is the Insurance company has appeared and filed its counter statement. After an elaborate enquiry, the Claims Tribunal awarded a sum of Rs.76,400/- with 7.5% interest per annum and further ordered that both the respondents therein are jointly and severally liable to pay the said amount with costs.

4 Against the said order, no appeal was filed, the revision petitioner herein filed an execution petition before the learned Subordinate Judge, Attur, in R.E.P.No.63 of 2015 to execute the award passed by the Claims Tribunal, Attur. In the said petition, the properties of the respondent herein were ordered to be attached. Subsequently, when they sent amin for attaching the property, that time the respondent filed the petition before the execution Court in R.E.A.No.271 of 2016 under Section 47(1) and Section 151 of C.P.C to dismiss the execution petition, on the ground that the revision petitioner herein obtained the award fraudulently by suppressing the material facts and at the time of the accident the offending vehicle was not driven by the first respondent therein and it was driven by one Saravanan. Then the charge sheet laid before the Court in Crime No.270 of 2008 which shows that, at the time of an accident the offending vehicle was driven by one Saravanan not the first respondent therein. The execution Court after giving opportunities to both the parties and allowed the petition filed by the respondent herein and consequently, dismissed the execution petition. Against the said order, the decree holder has filed the present Civil Revision Cases before this Court.



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5 According to the learned counsel for the petitioner, he met with an accident on 25.05.2008 and he was admitted in the hospital. Then the complaint was lodged before the Jurisdictional Police Station. After, discharging from the hospital he filed claim petition before the Motor Accident Claims Tribunal, Attur, wherein, the owner of the vehicle was shown as first respondent therein, the Insurance Company was shown as second respondent. After receiving the notice, the First respondent therein who is the owner of the vehicle never appeared before the Court. Therefore, he was set ex-parte, the second respondent/respondent Insurance Company alone appeared and filed its counter statement. After the enquiry, the Tribunal found that the revision petitioner herein is entitled to get a compensation of Rs.76,400/-. Since the Insurance Company has not deposited the award amount before the court, the petitioner filed the petition to execute the decree before the learned Subordinate Judge, Attur. Since the respondent has not appeared the attachment was ordered. Subsequently, when the Court amin went for attaching the property, the respondent herein requested two days time for depositing the amount. It is shock and surprise, that subsequently he filed the petition under Section 47 of C.P.C., to dismiss the execution petition. The learned Subordinate Judge, Attur, failed to consider that the award was not challenged either by the owner of the vehicle or by the Insurance company and even the Insurance Company filed its counter statement before the Motor accident Claims Tribunal, Attur, has not raised any objections that the vehicle was driven by one Samyappan. After an elaborate enquiry, the Tribunal awarded a sum of Rs.76,400/-. During the pendency of the execution petition filed by the petitioner for execution, the respondent got certificate copy of the First Information Report and the charge sheet filed by the police before the Magistrate. The charge sheet shows that the rider of the Motor cycle was one Saravanan not the Samyappan. Further, he would submit that the rider of the offending vehicle Saravanan has no valid driving licence. Therefore, they wrongly shows the Samyappan as a rider of the offending vehicle. Therefore, they fraudulently obtained the award amount which warrants interference by this Court.

6 According to the learned counsel for the respondent / Insurance Company it is stated that during the pendency of the execution petition, at the time of the accident, the offending vehicle was driven by one Saravanan and not by Samyappan. Therefore, the decree obtained against the wrong person is not executable and also they filed a copy of the First Information Report, Charge sheet before the competent Court. After considering the facts, the execution Court dismissed the petition, which does not warrants any interference.



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only in the charge sheet alone the said Saravanan was shown as accused. There is no evidence to show that the Saravanan only was riding the vehicle at the time of the accident and the petitioner herein knowing fully well and suppressed the fact mentioned the name of the owner cum driver in the claim petition. The owner of the vehicle was impleaded as the first respondent in the claim petition but, he has not appeared before the Court and filed the counter denying the fact that he was not riding the vehicle at the time of the accident and he entrusted his vehicle to some one. The respondent herein also has not mentioned the fact in the counter that the rider of the vehicle was not the Samyappan, and one Saravanan and he had also no licence. The claim petition was filed in the year of 2008 and the execution petition filed in the year of 2015. The respondent filed the petition under Section 47 C.P.C., only in the year 2016. Therefore, under these circumstances the order passed by the learned Subordinate Judge is perverse. Hence, the order passed by the learned Subordinate Judge, in R.E.A.No.271 of 2016 is set aside.

10 It is for the respondent has to work out its remedy in the manner known to law. The present Civil Revision Petitions are liable to be allowed.

11 This Court finds that there is a perversity in the order passed by the learned Subordinate Judge, even without ascertaining the facts as to who was driving the vehicle at the time of accident and simply relied on charge sheet allowed the application filed by the respondent herein in R.E.A.No.271 of 2016. In view of the above discussions, the orders passed by the learned Subordinate Judge are liable to be set aside and the Civil Revision Petitions are allowed. The order passed by the learned Subordinate Judge, Attur, are set aside. The learned Subordinate Judge, is directed to restore the execution petition in R.E.P.No.63 of 2015 and proceed further in accordance with law, and dispose the same in accordance with law.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sbn



To

1. The Motor Accident Claims Tribunal,
Subordinate Judge,
Attur.

2. The Subordinate Judge,
Attur, Salem District.

+2cc to Mr.C.Sivakumar, Advocate, S.R.No.49603, 49604

CRP.Nos.3347 & 3348 of 2017

PVS (CO)
CS/13/09/2019