



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2019

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P. (MD) .No.2487 of 2011(NPD)

and

M.P. (MD) .No.1 of 2011

P.Subramanian

... Petitioner/Petitioner/3rd Respondent

Vs.

Raja

... Respondent/Respondent/Petitioner

PRAYER: Civil Revision Petition filed under Article 115 of the Constitution of India, against the order dated 08.12.2011 made in I.A.No.1007 of 2011 in M.A.C.O.P.No.63 of 2005 on the file of the Motor Accident Claims Tribunal (FTC-I) Thoothukudi.

For Petitioner : Mr.S.C.Herold Singh
For Respondent : No appearance

ORDER

This Civil Revision petition is filed challenging the order dated 08.12.2011, passed by the Motor Accident Claims Tribunal (FTC-I) Thoothukudi, in I.A.No.1007 of 2011 in M.A.C.O.P.No.63 of 2005.

2.The facts in brief are as follows;

The respondent/claimant herein had filed M.C.O.P.No.63 of 2005, before the Motor Accident Claims Tribunal (FTC-I) Thoothukudi, claiming compensation as he has sustained injury in the accident. In his claim petition, with regard to the details as to how the accident had taken place is clearly stated as follows:

"On 07.01.2005 at about 18.30 hrs. the petitioner was travelling as a pillion rider in the first respondent's Yamaha bearing Regn.No.TN-69-D-5227 on Thoothukudi to Palayamkottai Main Road, from west to East. One Roshan Fernand, drove the said bike with high speed, without control in rash and negligent manner. When they were going west of Esakkiammn Koil, infront of V.O.C. College, one M.Amzath Baiq drove the 3rd respondent's Hero Honda Bike bearing Regn.No.TN-69-A-3512 on the same road in the opposite direction, with high speed, without control in rash and negligent manner. Both of them dashed each other. On account of this, the petitioner fell down and sustained swelling



in left leg, left foot right thigh, right hand. Immediately, he has taken to the A.V.M.Hospital, Thoothukudi. There he was in inpatient from 07.01.2005 to 22.01.2005 and 06.03.2005 to 17.03.2005. Bone scrolling was done in the said hospital."

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3.It appears that the revision petitioner, who has been arrayed as third respondent in the M.C.O.P., had entrusted his case to the Lawyer and thereafter, he tried to contact the said Lawyer on several occasions, but he was not able to contact him and thereafter, he came to know that the said Lawyer had stopped practice and that he had not informed the same to the revision petitioner. As a result of the non-representation of the case by the revision petitioner, the Tribunal has passed an exparte decree on 28.04.2008 and the entire liability has been mulcted on the third respondent.

4.After the passing of exparte order, the revision petitioner has filed an application to condone the delay in filing a petition to set aside the exparte decree on his coming to know about the same on 29.11.2011. The said petition was dismissed by the Tribunal only on the ground that there is an inordinate unexplained delay of 1312 days. Aggrieved over the same, the revision petitioner is before this Court.

5.A perusal of the claim petition, which has been extracted supra, would clearly indicate that even as per the claim petition, the drivers of both the vehicles have contributed to the accident and therefore mulcting the entire liability on the third respondent appears to be unfair and a chance should have been given to the revision petitioner to put-forth his case. Further, the order of the Tribunal is a nonspeaking order and sufficient reasons have not been assigned, while passing an exparte order.

6.Therefore, I am of the view that the delay of 1312 days is to be condoned and the Tribunal has erred in not considering the substantial defence put forward by the revision petitioner/third respondent.

7.In the result, this Civil Revision Petition is allowed and the order, dated 08.12.2011 passed in M.C.O.P.No.63 of 2005, is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The Motor Accident Claims Tribunal (FTC-I),
Thoothukudi.

+1 CC to MR.S.C.HEROLD SINGH, Advocate (SR-95383[F] dated
01/11/2019)

C.R.P. (MD) .No.2487 of 2011(NPD)

and

M.P. (MD) .No.1 of 2011

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