

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.289 of 2008

The National Insurance Co., Ltd.,
Krishnagiri

... Appellant/4th Respondent

vs

1.Durai ...Respondent/Petitioner

2.N.Thiruvengadam

3.The Royal Sundaram Alliance Insurance Co., Ltd.,
No.46, Whetes Road, Chennai.

4.Sudha

(Respondents 2 and 4 were exparte before
the Tribunal)

...Respondents 2 to 4/
Respondents 1 to 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 , against the Judgment and decree
dated 01.09.2006 made in M.C.O.P.No.1746 of 2003 on the file of
the Motor Accident Claims Tribunal (Subordinate Court)
Krishnagiri, Dharmapuri District.

For Appellant : Mr.J.Chandran
For R3 : Ms,Harini for
M/s.M.B.Gopalan
For R1,R2 and R4 : No Appearance

JUDGMENT

When the case was taken up for hearing, it was noticed that
as early as 04.07.2019, the appellant Insurance Company was
permitted to take substituted service of notice on the
contesting respondents, in any one of the issue of Tamil
dailies, having wide circulation in the area of residence of the
contesting respondents since no notice was served to the
contesting respondents,. However, the appellant Insurance
Company has not filed any proof to show that there was

substituted service of notice in terms of the order dated 04.07.2019.

2. On 25.07.2019, this case was adjourned by two weeks at request of the appellant. Thereafter, again on 08.08.2019. It was noticed that since there was no effective steps in respect of substituted service of notice, as a final chance, the appellant was given time upto 04.09.2019 to file affidavit of service.

3. It appears that thereafter this case was listed under the caption for dismissal as there was no representation on behalf of the appellant. However, the caption was directed to be removed by an order dated 12.09.2019.

4. However, till date, the appellant has not filed any affidavit of service for having taken steps either to serve notice on the contesting respondents or to substituted service of notice as was ordered. It appears by oversight, the learned counsel for the appellant made elaborate submissions for reduction of the compensation awarded to the 1st respondent/claimant though the notice on the contesting respondents remains unserved. In absence of service of notice on the contesting 1st respondent/claimant, no adverse orders can be passed even if the appellant Insurance Company may have a good case for deduction of compensation.

5. Since the appeal is of the year 2008 in respect of the accident which had taken place on 30.11.2002 and in respect of the claim of the year 2004, I am inclined to dispose this Civil Miscellaneous Appeal with liberty to the appellant to restore this appeal in case the appellant has taken steps for substituted service of notice as was ordered by this Court vide order dated 04.07.2019.

6. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No cost.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal
(Subordinate Court) Krishnagiri,
Dharmapuri District.

Copy to:
The Section Officer, VR Section, High Court, Madras.

C.M.A.No.289 of 2008

PP (CO)

RV (18/09/2020)



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