

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2385 of 2016

Simon Fenelon

.. Appellant/1st Respondent

Vs.

1.Ravindran (Minor)

(Rep. By his mother and next friend,
Deivarani)

2.The Divisional Manager,

United India Insurance Co. Ltd.,
Nehre Street,
Pondicherry.

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order dated 24.08.2015, made in I.A. No. 675 of 2015 in M.C.O.P. No. 1156 of 2007, on the file of the III Additional District Court, Pondicherry.

For Appellant : Mr. T. Moscow Mani
for Mr. P.B. Saravanan

For Respondents: No appearance (for R1)
Mr. J. Chandran (for R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the order dated 24.08.2015, made in I.A. No. 675 of 2015 in M.C.O.P. No. 1156 of 2007, on the file of the III Additional District Court, Pondicherry.

2.The appellant is the 1st respondent in M.C.O.P. No. 1156 of 2007, on the file of the III Additional District Court, Pondicherry. The 1st respondent filed the said claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.02.2005.

3.According to the 1st respondent, the appellant drove the Motorcycle in a rash and negligent manner and dashed against the

1st respondent and caused accident. The 1st respondent sustained grievous injuries and filed claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident, against the appellant and 2nd respondent-Insurance Company. The appellant did not appear and he was set exparte before the Tribunal. The 2nd respondent-Insurance Company contested the M.C.O.P. The Tribunal considering the materials on record, held that the accident has occurred only due to rash and negligent riding by the rider of the Motorcycle belonging to the appellant and directed the appellant to pay a sum of Rs.1,35,000/- as compensation to the 1st respondent, as there was no Insurance Policy issued by the 2nd respondent-Insurance Company. The appellant filed I.A. No. 349 of 2015 to condone the delay of 125 days in filing the petition to set aside the exparte award passed in M.C.O.P. No. 1156 of 2007. The said I.A. No. 349 of 2015 was ordered on 14.07.2015. The application to set aside the exparte award was numbered as I.A. No. 675 of 2015. The Tribunal by the order dated 24.08.2015, dismissed the I.A. No. 675 of 2015, on the ground that the award passed by the Tribunal is not an exparte award, but, it was contested by the 2nd respondent-Insurance Company and the said award was passed after contest. The appellant filed Review Petition, which was unnumbered, to review the order dated 24.08.2015 made in I.A. No. 675 of 2015. The same was dismissed on 26.02.2016.

4.Challenging the order dated 24.08.2015, made in I.A. No. 675 of 2015 in M.C.O.P. No. 1156 of 2007, the appellant has come out with the present appeal.

5.Though notice has been served on the 1st respondent and his name is printed in the cause-list, there is no representation for him either in person or through counsel.

6.Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

7.From the materials on record, it is seen that the notice in M.C.O.P. No. 1156 of 2007 was not served on the appellant and appellant was served only by Substituted Service. On coming to know about the award, the appellant filed I.A. No. 349 of 2015 to condone the delay of 125 days in filing the petition to set aside the exparte award. By the order dated 14.07.2015, the said application was ordered by the Tribunal. The appellant filed I.A. No. 675 of 2017 to set aside the exparte award. By the order dated 24.08.2015, the Tribunal dismissed the said I.A. No. 675 of 2017, on the ground that the said award was not an exparte award, but contested one. The contention of the learned counsel appearing for the appellant is that, on the date of accident, i.e., on 09.02.2005, there was valid insurance policy

issued by the 2nd respondent-Insurance Company. Considering the above submissions and also the fact that the I.A. No. 349 of 2015 filed by the appellant to condone the delay of 125 days in filing the petition to set aside the award was ordered, it will be in the interest of justice to give an opportunity to the appellant to prove that on the date of accident, there was valid insurance policy issued by the 2nd respondent-Insurance Company in respect of the offending vehicle.

8. For the above reason, this Civil Miscellaneous Appeal is allowed and the order dated 24.08.2015 made in I.A. No. 675 of 2015 is set aside. The portion of the award dated 15.10.2014 made in M.C.O.P. No. 1156 of 2017, fixing the liability on the appellant alone is set aside and the M.C.O.P. is remanded to the Tribunal to decide the question, whether on the date of accident there was valid insurance policy issued by the 2nd respondent was in force or not. The appellant as well as the 2nd respondent-Insurance Company are permitted to let in evidence on this aspect only. The M.C.O.P. is of the year 2007. The learned III Additional District Judge, (Motor Accidents Claims Tribunal), Pondicherry, is directed to dispose of the M.C.O.P. No. 1156 of 2007 within a period of 3 months from the date of receipt of a copy of this judgment. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa

To

1. The III Additional District Judge,
(Motor Accidents Claims Tribunal),
Pondicherry.

2. The Section Officer,
V.R Section,
High Court, Madras.

+1 Cc to Mr.J. Chandran, Advocate sr 9973.

C.M.A. No. 2385 of 2016

VGII (CO)
SP(01/12/2020)