

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020
CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.261 of 2016

1. Malarkodi,
2. Vanitha,
3. Nivash

...Appellants

/versus/

1. Gnanasekaran
2. The Manager,
National Insurance Company Ltd.,
T.S.No.4132, First Floor, East Main Road,
Pudukottai Post & District.

...Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under 43 Rule 1(C) of the Civil Procedure, 1908 praying against the fair and final order dated 27.07.2015 made in I.A.No.1548 of 2014 in M.C.O.P.No.88 of 2011 on the file of the Principal District Court, Namakkal.

For Appellants : Mrs.K.Ponmani,
for Mr.T.Muruga Manickam
For R1 : Not ready notice
For R2 : No appearance

J U D G M E N T

(The case has been heard through video conference)

Heard the Learned Counsel for the Appellants. Though notice was served to the Insurance Company/2nd respondent, there is no representation on behalf of the 2nd respondent/Insurance Company.

2. This Appeal is filed by the appellants, being aggrieved by the dismissal of the claim petition for non-prosecution. The reason stated in the impugned order is that earlier, in the year 2012, the claim petition was dismissed for default and later restored on file. In spite of restoration, the claim petitioners did not co-operate with the Trial. Hence, on 06.06.2014, the claim petition was dismissed for default again. The attempt of the claim petitioners to restore the petition for the second time failed, since the 1st claimant has not substantiated the cause for not attending the Court on the date of hearing. The Tribunal, pointing out that the 1st claimant has not filed any medical evidence for fever, disbelieved the claimant and

dismissed the restoration petition thereby, the claim petition was dismissed.

3.The Learned Counsel for the appellants would submit that the claim petitioners are rustic villagers. After losing the sole breadwinner in the road accident, they were not properly informed and due to the illness of the 1st claimant, the others were not able to follow the case with the counsel.

4.Perused the records and the impugned order of the Tribunal.

5.One Jayaraman died in the road accident on 09.01.2011. Soon after his death, his widow and children have filed the claim petition before the Tribunal, Namakkal on 21.05.2012. Earlier, when the matter was taken up for trial, there was no representation. Hence the claim petition was dismissed for default on 02.08.2012. The appellants have filed petition to restore the claim petition and the same was restored. Then again, they failed to attend the Court. Hence for the 2nd time the claim petition was dismissed. This time the restoration petition filed came to be dismissed in I.A.No.1458 of 2014 on 27.07.2015. Hence, the appeal is filed in the year 2016.

6.On considering the right of the claimants as well as the reason for dismissal of the claim petition for default, this Court is of the view non suiting the claimants may not render appropriate Justice and it may go against the spirit of the welfare legislation.

7.Hence, the claim petition is restored with the direction to the Tribunal to dispose of the claim petition within six months, from the date of receipt of copy of this judgment. The claimants, who are the appellants herein, are not entitled for the interest to the award, if any passed in their favour for the period from 06.06.2014 to 23.12.2020.

8.With the above direction, the Civil Miscellaneous Appeal is Allowed. Order in I.A.No.1458 of 2014 is set aside and the M.C.O.P.No.88 of 2011 is restored on file of the Principal District Judge, Namakkal, on condition that no interest shall be paid for the period from 06.06.2014 to 23.12.2020 to the award, if any. The Registry is directed to inform the Principal

District Court, Namakkal, to take up the matter and dispose of it, as per the judgment passed by this Court. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

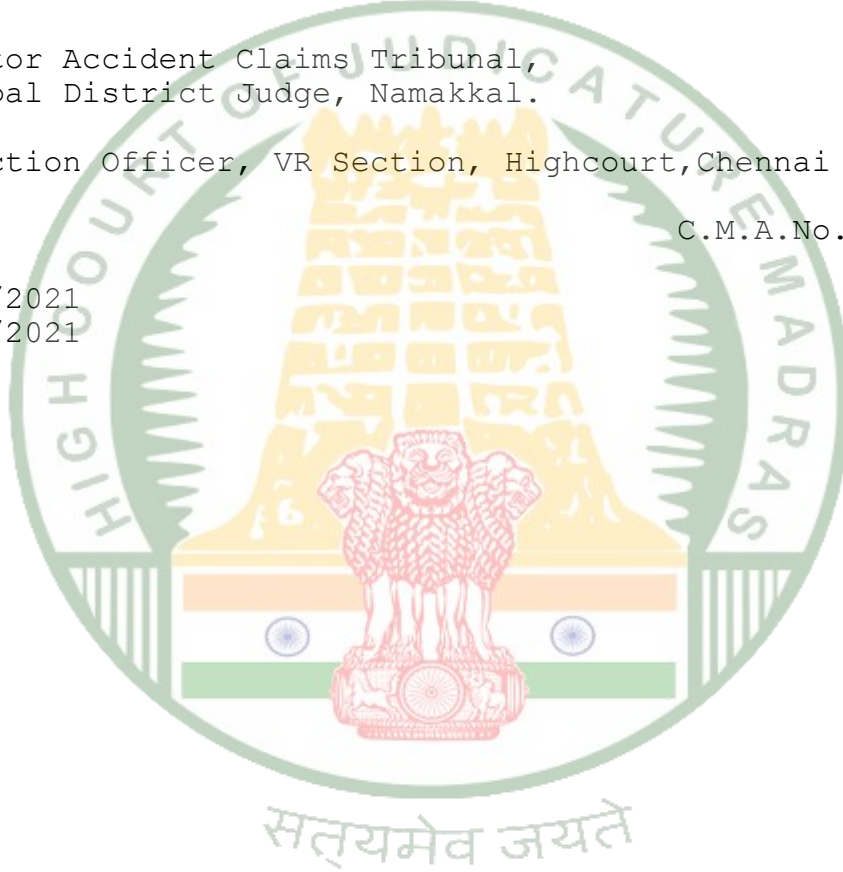
rpl

To,

1. The Motor Accident Claims Tribunal,
Principal District Judge, Namakkal.
2. The Section Officer, VR Section, Highcourt, Chennai 104.

C.M.A.No.261 of 2016

RGN(CO)
baf 04/05/2021
kkv/18/05/2021



WEB COPY