

C.R.P.(NPD) No.3338 of 2014 and
C.R.P.(NPD) No.3339 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD) No.3338 of 2014 and M.P.No.1 of 2014
and
C.R.P.(NPD) No.3339 of 2014 and M.P.No.1 of 2014

R.Sarala ...Petitioners in both C.R.Ps

..Vs..

1.Kandasamy
2.Siranjeevi ...Respondents in C.R.P.No.3338 of 2014

1.Kandasamy
2. Siranjeevi
3.M/s.National Insurance Co.Ltd.,
Branch Office-1,
Thanthai Periyar Complex,
Post Box No.15, Salem-1 ...Respondents in C.R.P.No.3339 of 2014

PRAYER in C.R.P.No.3338 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 15.07.2010 made in I.A.No.2336 of 2006 in M.C.O.P.No.1886 of 2004 on the file of Additional District Judge, Salem.

PRAYER in C.R.P.No.3339 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 15.07.2010 made in I.A.No.1939 of 2008 in M.C.O.P.No.1886 of 2004 on the file of Additional District Judge, Salem.

For Petitioner :Mr.A.Kumar in both cases

For Respondents :No appearance

ORDER

The respondent herein filed M.C.O.P.No.1886 of 2004 seeking compensation for the injuries sustained in the road accident and the first respondent namely Sarala-owner of the vehicle has remained exparte and the Insurance Company has contested the case by filing the counter statement.

2. During the trial, on behalf of the petitioners, P.W.1 and P.W.2 were examined and Exhibits P1 to P7 were marked and the witnesses were cross-examined by the second respondent and on behalf of the respondents R.W.1 and R.W.2 were examined and Exhibits R1 and R2 were marked and cross-examined by the petitioner side.

3. Thereafter, based upon the oral and documentary evidence, the special Tribunal constituted for trying the Motor Accident Claims cases, disposed of the M.C.O.P by passing an award on 29.09.2006. Thereafter, the first respondent-Sarala, has filed a petition

to set aside the exparte decree under Order 9 Rule 13 of C.P.C along with an Interlocutory Application to implead has a third party/third respondent in the M.C.O.P. The said I.A 2333 of 2006 and petition to implead the third party 1939 of 2008 was dismissed on 15.07.2010 and hence, the present revision.

4. The learned counsel for the petitioner would contend that this respondent, namely owner of the vehicle, has not contested the case. It is an exparte order and hence, she must be given an opportunity. Without doing that, the trial Court has held that the petition filed under Order 9 Rule 13 of C.P.C is not maintainable which is erroneous in view of the matter.

5. After perusing the order passed in M.C.O.P, it is seen that on behalf of the petitioner two witnesses were examined and cross-examined on the side of the respondent. So also on the side of the respondent two witnesses were examined and cross-examined by the petitioner. Documentary evidences have been marked and hence, the conclusion arrived at by the trial Court that it is a contested decree is well considered and well merited order, which does not warrant interference at this stage.

6. Furthermore, it is to be stated that the Hon'ble Supreme Court in B.Janakiramaiah Chetty Vs.A.M.Parthasarathi and others reported in 2003(2) CTC 242 has discussed the scope and ambit of Order 17 Rule 2 and its explanation and has held that:-

"The crucial expression in the Explanation is "Where the evidence or a substantial portion of the evidence of a party". There is a positive purpose in this legislative expression. It obviously means that the evidence on record is sufficient to substantiate the absentee party's stand and for disposal of the suit. The absentee party is deemed to be present for his obvious purpose. The Court while acting under the explanation may proceed with if the prima facie is the position. The Court has to be satisfied on the facts of each case about this requisite aspect. It would be also imperative for the Court to record its satisfaction in that perspective. It cannot be said that the requirement of substantial portion of the evidence or the evidence having been led for applying the explanation is without any purpose. If the evidence on record is sufficient for disposal of the suit, there is no need for adjourning the suit or deferring the decision".

7. Hence, in this view of the matter, this Civil Revision Petition is dismissed. Taking into consideration that the liability has been fixed upon the petitioner who is the owner of the vehicle, this Court is of the considered view that it is open to the petitioner herein/owner of the vehicle to file a regular appeal. In the event of any appeal being filed, the period of pendency of this C.R.P shall stand excluded for the purpose of limitation.

8. With these observations, this Civil Revision Petition is dismissed and C.R.P.No.3339 of 2014 is also dismissed. Consequently, connected M.Ps are closed.

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Index:Yes/No
Speaking Order:Yes/No

To

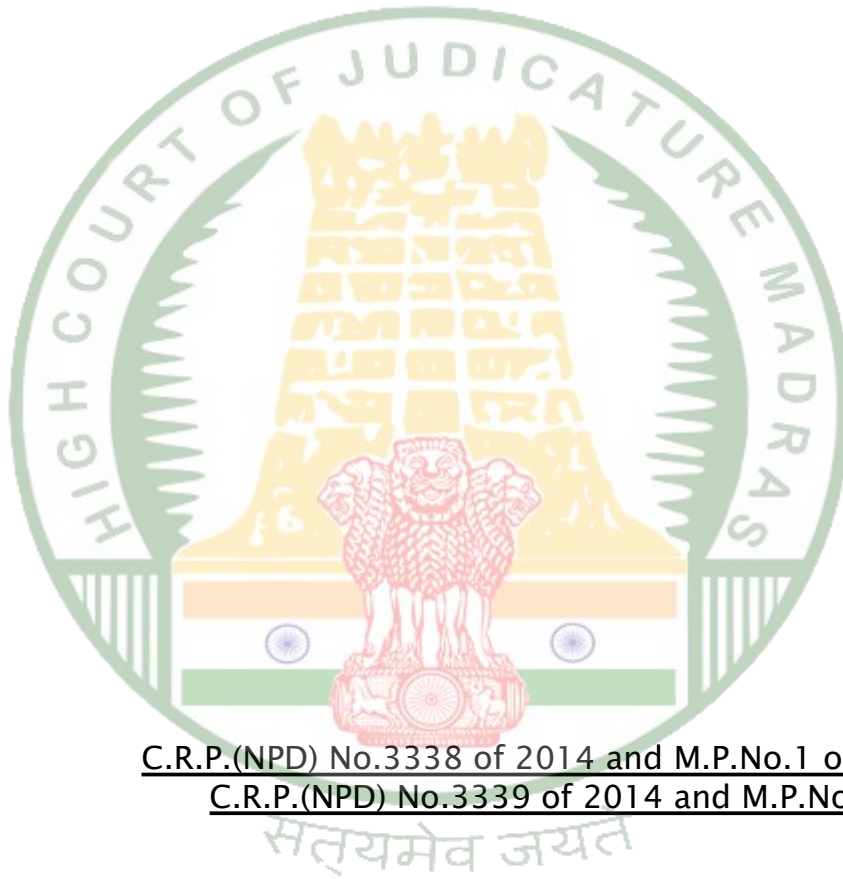
The Additional District Judge, Salem.

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RMT.TEEKAA RAMAN,J.,

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