



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 27.08.2020

CORAM

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P (MD) (PD)No.1527 of 2013

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1.Chellapraba

2.Minor Harsitha

(Minor represented by her mother

and guardian 1st petitioner) : Petitioners/Petitioners/Petitioners

Vs.

The National Insurance Company Limited

Branch Office

74-A, Paramathi Road

Namakkal

: Respondent/2nd Respondent/Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 14.03.2013 made in E.P.No.130 of 2011 in M.C.O.P.No.712 of 2005 on the file of the District Court, Karur.

For Petitioners : Mr.PT.S.Narendra Vasan

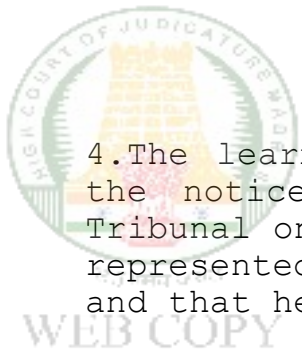
Respondent : No appearance

O R D E R

Notice is served on the respondent yet there is no appearance. It is a strange case, where the District Judge has gone entirely in error in going after the award passed by the Motor Accident Claims Tribunal.

2.The petitioners herein are the victims of the road accident that took place some time in 2004, in which, the husband of the first petitioner and the father of the second petitioner had lost his life. Claiming compensation of Rs.1.0 Crore, they laid M.C.O.P.No.712 of 2005. The Insurance Company of the offending vehicle was arrayed as the second respondent, and the parents of the deceased were arrayed as the respondents 3 and 4. The second respondent/Insurance Company appeared through its counsel and participate in the enquiry. An award for Rs.48 lakhs with interest was passed by the Tribunal and to enforce the same, the claimants laid E.P.No.130 of 2011.

3. Before the Execution Court, the Insurance Company took up a plea that notice to the petitioner was not properly served in terms of Order 29 Rule 2 C.P.C. Accepting the same, the Execution Court dismissed E.P.No.130 of 2011. This is in challenge before this Court.



4.The learned counsel for the petitioners/claimants has brought to the notice of this Court the copy of the award passed by the Tribunal on 30.09.2011 which indicate that the second respondent was represented by the Advocate Mr. Panneer Selvam before the Tribunal and that he has also filed his counter.

5.The learned counsel was aghast at the way the learned District Judge/ Execution Court has dealt with the matter in a case which was properly contested by the respondent, and after suffering an award on merit, to file a counter in the Execution Petition, taking up a plea that notice was not served in terms of Order 29 Rule 2 C.P.C is atrocious, and it is very unfortunate that the learned District Judge found merit in the said plea to dismiss the Execution Petition.

6.As already indicated, the respondent, though was properly served in this case and its name also figured in the cause list, it now becomes a party in default with none representing it.

7.1.This Court went through the entire papers and was shocked and appalled by the District Judge who passed the impugned order. The learned district Judge appeared to have cried eureka as if he had discovered something, but only to blunder himself in going after an award quite contrary to law.

7.2 It is extremely painful to realize that the learned District Judge has not realized the purpose of issuing notice. It is too rudimentary a principle that this Court sitting in revision has to convert itself into some kind of a study centre to educate the learned District Judge (who this Court was informed had superannuated) on the fundamentals of issuing notice. A Notice is issued only to intimate the other party about the case pending before the court. Here is a situation, where in response to the notice issued in the MCOP, a counsel had appeared for the insurance company, and had filed the counter and an award too had been passed on merits. Indeed, the decretal copy of the award passed by the Tribunal mentions the name of the counsel of the Insurance Company/ second respondent before it as representing it. What is shocking is that the same counsel Thiru Pannerselvam, who appeared for the insurance company before the Tribunal and appeared again before the Execution Court to oppose the execution of the award. The only purpose this unethetical resistance by the insurance company achieved is that it has to pay interest at a much higher rate to the claimants for the entire duration of the pendency of the award. A poetic justice after all to the claimants.

8.In view of the above, the order passed in E.P.No.130 of 2011 in M.C.O.P.No.712 of 2005 on the file of the District Court, Karur, is



set aside and the matter is remitted back to the District Court for enforcing the award.

9.In the result, this Civil Revision Petition is allowed. No costs.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM/Msa

To

The District Judge, Karur

Copy to:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

+1 CC to M/s.PT.S. NARENDRAVASAN, Advocate (SR-15323[F] dated
28/08/2020)

C.R.P (MD) (PD)No.1527 of 2013

27.08.2020

KK(15.09.2020) 3P 5C