BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.07.2020
CORAM
THE HON'BLE MR.JUSTICE **S.S.SUNDAR**
C.R.P.(NPD)(MD)No.1334 of 2015
and
M.P.(MD)No.1 of 2015

M/s.National Insurance Company Limited,
represented by its Branch Manager,
Karaikudi : Petitioner

.. Vs ..

1.M.Sevugamoorthy
2.A.L.Selva Ilango : Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the order passed by the Motor Accidents Claims Tribunal (IV Additional Subordinate Court), Madurai, dated 11.11.2014 in I.A.No.764 of 2011 in M.C.O.P.No.3102 of 2002.

For Petitioner : Mr.D.Sivaraman

For R1 : Mr.Ravi
for Mr.N.Palanisamy

For R2 : Mr.R.Karunanidhi

ORDER

This Civil Revision Petition is directed against the order in I.A.No.764 of 2011 in M.C.O.P.No.3102 of 2002 on the file of the Motor Accidents Claims Tribunal (IV Additional Subordinate Court), Madurai.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

3.The first respondent herein filed a claim petition in M.C.O.P.No.3102 of 2002 before the Motor Accidents Claims Tribunals, Madurai, claiming compensation for the injury suffered by him due to a motor accident. It is stated that at the time of filing counter, the petitioner was not aware of certain manipulations done by the second respondent, who is the owner of the vehicle. It is alleged that the owner of the vehicle has fraudulently forged the policy, as if the policy was in force as on the date of accident. It is further stated that such fraudulent manipulation was not noticed earlier by the Insurance Company.

4.Before the Tribunal, the Insurance Company disputed the manner of accident and its liability. However, no material was produced before the Tribunal to support the claim of the petitioner that the Insurance Company is not liable to pay compensation. Based on the available material, an award was passed allowing a sum of Rs.59,000/- in favour of the first respondent, as compensation for the injury suffered by him. It is stated that the revision petitioner/Insurance Company realised that the policy in respect of the vehicle owned by the second respondent was valid only for the period from 13.09.2001 to 12.09.2002 and that the dates have been manipulated/altered fraudulently, as if it was valid from 13.10.2001 to 12.10.2002.

5.After collecting records, which are sufficient to prove the fraudulent manipulation done by the second respondent, the petitioner appears to have file an application in I.A.No.764 of 2011 to recall the award passed on 30.01.2010 and the decreetal order following the said award. The said petition was dismissed by the Tribunal on the ground that the petitioner has not raised any objection regarding the policy coverage and that therefore, it is estopped from disputing the same at a later stage. Accordingly, the Tribunal has dismissed the application. Aggrieved by the same, the present Civil Revision Petition is filed.

6.The learned Counsel for the petitioner submitted that the case on hand is a peculiar case, where, fraud has been played by the second respondent/owner, who manipulated/fabricated the policy stated to have been issued by the Insurance Company, by alternating dates. It is stated further that the policy, that was filed before the lower Court, was fabricated, so as to make it valid as on the date of accident. According to the learned Counsel for the petitioner, this is a valid ground for reviewing the order.

7.The learned Counsel for the petitioner relied upon a judgment of this Court reported in ***2000 ACJ 1032***, wherein, this Court has held that the Tribunal has power to review its own order, if it is convinced that the order was obtained through fraud or misrepresentation of such a dimention, as it would affect the very basis of the claim resulting in miscarriage of justice. This judgment though was referred to by the lower Court, the lower Court refused to follow the principle on the ground that the facts of the case before this Court is not similar and that therefore, the principle cannot be extended to the present case.

8.This Court is unable to sustain the view expressed by the learned Judge. It is well settled that fraud vitiates any solemn transaction and that the Court retains the power always to rectify the wrong done to any party on account of fraud perpetrated by any one of the parties to the proceedings. Having regard to the pleadings and the material produced before this Court, this Court is convinced that the petitioner has satisfied this Court that a fraud has been done in this case by the second respondent with or without any collusion with the claimant and that the lower Court ought to have entertained the application of review and considered the merits of the case based on the pleadings and materials produced before the Tribunal.

9.One aspect of the case regarding pleading has to be seen in this case, as the Insurance Company, at the time of conducting the case, appears to be not aware of the manipulation and fabrication of records. Though it is stated that the petitioner was not aware of manipulation at that time, it cannot be disputed that the petitioner has actually seen the policy and the documents, which are the basis for supporting the claim of the claimant. When this Court set aside the order and direct the lower Court to re-hear the case, the inordinate delay is likely to cause serious prejudice to the claimant, namely, the first respondent. The accident took place on 04.10.2002 and the petition was filed in 2002. The award was passed in 2010 and the petition for review was filed in 2010 without delay. No strong reason or motive or lack of prudence, except negligence can be seen from the facts narrated and brought to the notice of this Court by the respondents. Hence, this Court is inclined to allow this petition.

10.Assuming that the owner of the vehicle is liable, it has been repeatedly held and established by judicial pronouncements that the Insurance Company is primarily liable, even if there is violation of policy conditions. The Insurance Company still have a right to proceed against the owner of the vehicle, in case, where there is violation of policy conditions or the driver of the vehicle has no valid driving license. Since pay and recovery, which is being followed by Courts, give enough protection to the Insurance Company to proceed against the owner of the vehicle, the petitioner can be directed to pay the amount awarded by the Tribunal to the first respondent and then resort to recovery of the amount from the owner of the vehicle, in case, the petitioner succeed in establishing fraud in the proceedings after rehearing.

11.Accordingly, this Civil Revision Petition is allowed and the order passed by the Tribunal in I.A.No.764 of 2011 in M.C.O.P.No.3102 of 2002 is set aside. The application in I.A.No.764 of 2011 in M.C.O.P.No.3102 of 2002 stands allowed and accordingly, the order passed by the Tribunal in M.C.O.P.No.3102 of 2002, dated 03.02.2010 is recalled. The Tribunal, namely, the IV Additional Subordinate Judge, Madurai, is directed to dispose of M.C.O.P.No.3102 of 2002 afresh within a period of eight months from the date of receipt of a copy of this order. This order is subject to condition that the petitioner pay the entire amount as per the award in M.C.O.P.No.3102 of 2002, dated 03.02.2010 within a period of ten weeks from the date of receipt of a copy of this order. The petitioner is entitled to recover the amount from the first respondent, in case, the Tribunal conclude that the of owner of the vehicle alone is liable. It is open to the parties to let in additional evidence by recalling existing witnesses or by examining any other witnesses before this Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

cmr

To

The IV Additional Subordinate Judge,
Motor Accidents Claims Tribunal, Madurai,

C.R.P.(NPD)(MD)No.1334 of 2015
22.07.2020

AP (29.07.2020) 4P-2C