

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P.(PD).No.2260 of 2018 and
C.M.P.No.14161 of 2018

1.R.Kanaga

2.Minor Shobika

(Minor represented by her mother and
Natural Guardian R.Kanaga, the first
petitioner herein)

3.Ramal

4.Raman

.. Petitioners

Vs.

Shriram General Insurance Co. Ltd.,

2nd Floor, Nagappa Complex,

1076, Mettupalayam Road,

Coimbatore-641 002.

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the Fair and Decretal order dated 26.06.2018 passed in I.A.No.1750 of 2017 in M.C.O.P.No.65 of 2012 on the file of the Motor Accidents Claims Tribunal (III Additional District and Sessions Court), Tiruppur.

For Petitioners

: Mr.K.Goviganesan

For Respondent

:Mr.S.Dhakshnamoorthy

ORDER

This petition has been filed challenging the order dated 26.06.2018 passed in I.A.No.1750 of 2017 in M.C.O.P.No.65 of 2012 on the file of the Motor Accidents Claims Tribunal (III Additional District and Sessions Court), Tiruppur.

2. The legal representatives of the van driver had filed the claim petition before the Court below and the said claim petition was decreed as prayed for and the respondent Insurance Company was set exparte, due to non-appearance, against which the respondent Insurance Company filed the petition in I.A.No.1750 of 2017 in M.C.O.P.No.65 of 2012, before the III Additional District and Sessions Court, Tiruppur at Dharapuram and the same was allowed vide order dated 26.06.2018. Challenging the said order, this civil revision petition has been filed by the legal representatives of the deceased van driver.

3. The learned counsel appearing for the petitioners submits that though the Court below observed that due to the carelessness of the respondent, the case was left exparte and further there was a delay of three years to file petition under Order 9 Rule 7 of Civil Procedure Code and the

same was condoned, due to reason that justice should be delivered on fair trial and not on technical default. He further submits that the court below failed to see that the award has been passed on merits, after considering the oral and documentary evidence and therefore the same cannot be considered as an Ex-parte decree. He therefore prays to set aside the order passed by the court below.

4. When the matter was taken up for hearing on 04.03.2021, it was brought to the knowledge of this Court by the learned counsel for the respondent that the cleaner of the van also filed an application before the Court below and in the said claim petition the respondent was exonerated from paying the compensation and the same principle will apply for present case as well. He would further submit that in case the claim petition is filed under Section 163A of Motor Vehicles Act, the liability may arise against this insurance company

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5. In reply to the said submission, the learned counsel for the petitioners submitted they are also planning to file amendment petition , before the court below to amend the claim petition so as to make their claim under

Section 163A of the Act.

6. Heard both sides. Perused the records.

7. Upon hearing the submissions and on perusal of the available records, it appears that the court below has allowed the application filed by the respondent to condone the delay in filing the application to set aside the exparte order stating that the delay has been occurred due to the carelessness of the respondent and the justice should be delivered on a fair trial. In this context, it is relevant to extract the relevant portion of the order passed in I.A.No.1750 of 2017, which reads as under:

"The argument of both side parties considered and it is observed that the petitioner/R3 has blamed against his former counsel who appeared in this case on behalf of him. But no any evidence produced by him to prove that fact. If it is true what prevented the R3 to file the petition under Order 9 Rule 7 CPC even after setting notice in the execution petition as stated by the respondent/petitioners. Therefore, it is obvious that due to the carelessness of the R3 the case has been left exparte. Further he delayed about 3 years to file the Order 9 Rule 7 CPC petition. However the justice should be delivered on a fair trial not on technical default. It is it not, it would amount to act against the legal maxim "Audi Alteram Partem". As the same time the difficulties caused to the respondents/petitioners also to be taken into consideration."

In the present case, the legal heirs of the van driver filed the claim petition before the Court below. The cleaner of the van also sustained injuries and he has also filed the claim petition before the Court below. In the said claim petition filed by the cleaner of the van, the Court below has exonerated the respondent. Therefore, it is vehemently argued on behalf of the Insurance Company that the same principle will apply for the present case as well and if the delay is not condoned the interest of the respondent would be affected.

8. In view of the above, this Court is of the view that the delay needs to be condoned since the Court below has already exonerated the respondent from its liability, for the same accident, in the claim petition filed by the cleaner of the van. Therefore, this Court is of the view that the Court below has rightly condoned the delay by observing that justice should be delivered on a fair trial and not on technical default. Therefore, I do not find any merit in this civil revision petition and the same is liable to be dismissed.

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9. Accordingly, this Civil Revision Petition is dismissed. As the claim petition is pending from 2012, this Court directs the Court below to dispose of the same, within a period of *six months* from the date of receipt of a copy of

KRISHNAN RAMASAMY,J.

arr/rst

this order. However, this Court is not making any observation to the fact that whether the petitioner will make any amendment to the claim petition, so as to make claim under Section 163A of the Act or not, it is for the petitioners to approach the Court below, if so advised, in the event any application being filed, the Court below shall consider the same in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

19.03.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

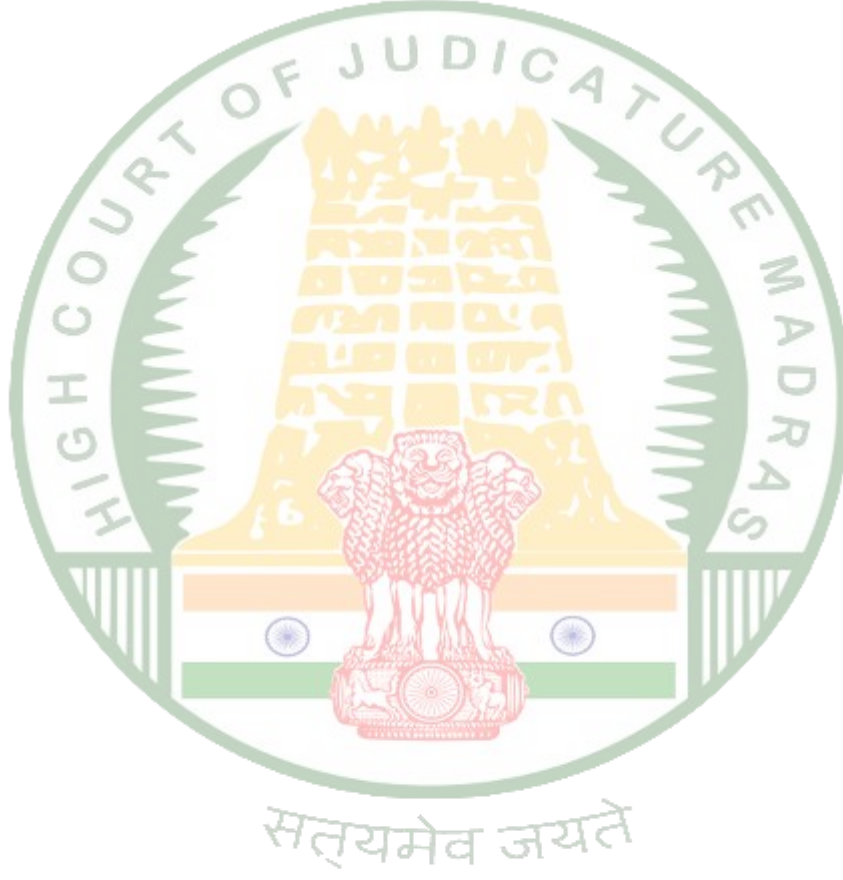
To

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