

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(PD) No.3469 of 2016
in
CMP.No.17667 of 2016

P.Rajamani
S/o.N.C.Palaniappan

... 1st Respondent/Petitioner/Petitioner

Vs.

1.Kaveri Ammal
W/o. Late Raman

2.Mathammal
W/o.Manickam

.... Petitioners/Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Petition and Order dated 21.10.2016 in so far as the condition imposed therein, made in REA 64 of 2016 in REP 92 of 2016 on the file of the 1st Additional District Judge, Salem.

For Petitioner : Mr.S.Kalyanaraman

For Respondents : Mr.J.Franklin

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ORDER

(This case has been heard through video conference)

This revision petition has been filed seeking to set aside the Petition and Order dated 21.10.2016 insofar as the condition imposed therein, made in REA No.64 of 2016 in REP No.92 of 2016 on the file of the I Additional District Judge, Salem.

2. The learned Counsel for the petitioner would submit that the petitioner is the owner of bus bearing Regn.No.TN29AY 0416. The vehicle was insured with the Oriental Insurance Company Ltd., Dharmapuri Branch for the period between 18.05.2017 to 15.05.2018. The respondents had filed MCOP No.1660 of 2007 claiming for compensation in respect of a death of one Raman in a road accident that had occurred on 07.07.2007 at 11.45 a.m. Near Angamuthu Thottam, Kuppanoor Bridge, Periyapalayam, in which the bus of the petitioner was alleged to be involved and that the respondents had wrongly impleaded the New India Insurance Company Ltd., Dharmapuri, as the insurer of the vehicle. The petitioner was set ex-parte and an award came to be passed by order dated 28.01.2016 against the petitioner and the New India Insurance Company Ltd., Dharmapuri. Thereafter, the respondents had filed REP. No.92 of 2016 and the petitioner was set ex parte in the Execution Petition and the bus belonging to the petitioner was attached. Only after the

attachment, the petitioner came to know about the award being passed in MCOP No.1660 of 2007 against him on 28.01.2016. He would submit that, the award had been passed by the Tribunal without impleading the correct Insurance Company and thereby, the petitioner had filed two applications, one in REA No.64 of 2016 to set aside the ex-parte order and another in REA No.65 of 2016 for raising the attachment on the bus. The fact remains that only during the E.P. proceedings, the petitioner came to know about the non impleading of the correct Insurance Company and thereby, the petitioner had also filed a petition in I.A.No.2 of 2020 to set aside the award passed in MCOP No.1660 of 2007. Meanwhile, the Executing Court raised the attachment by passing conditional order directing the petitioner to deposit $\frac{1}{4}$ of the award amount into the Court Deposit on or before 11.11.2016, against which, the present revision has been filed. The learned Counsel would submit that the award passed by the Tribunal without impleading the correct Insurer itself is wrong and thereby, the petitioner is not liable to pay any amount. He would submit that the petition in I.A.No.2 of 2020 seeking to set aside the award dated 28.01.2016 in MCOP No.1660 of 2007 is also kept pending. Thereby, he would seek to set aside the petition and order dated 21.10.2016 insofar as the condition imposed directing the petitioner to deposit $\frac{1}{4}$ of the award amount.

3. The learned Counsel for the respondents would submit that the petitioner is the owner of the bus and he owns several other vehicles and his vehicles are insured with different Insurance Companies and that the respondents are put to a difficult situation due to non furnishing of the correct particulars by the petitioner. The MCOP is of the year 2007. The petitioner as owner of the vehicle is liable to furnish the correct insurance details to the police. Due to the mistake committed by the petitioner/owner of the bus, the respondents who are the victims are unable to enjoy the fruits of the award dated 28.01.2016.

4. At this juncture, the learned Counsel for the petitioner would submit that the petitioner cannot be blamed for the mistake committed by the respondents. They have impleaded a wrong Insurance Company and the Tribunal, without properly assessing the facts, had passed an award which is illegal. If the Tribunal had directed to implead the correct Insurance company, a proper award would have been passed and that the petitioner cannot be blamed and the petitioner is not liable to pay comply with the conditional order. He would submit that if a direction is issued to the concerned Tribunal to dispose of the I.A.No.2 of 2020 and permit the

petitioner to contest the MCOP No.1660 of 2007, the petitioner will appear and co-operate for speedy disposal of the MCOP No.1660 of 20047.

5. Heard the Counsels on either side and perused the materials placed on record.

6. It is pointed out that the respondents have impleaded a wrong Insurance Company and the Tribunal without properly looking into the Insurance policy, had passed the award.

7. Mr.J.Franklin, representing the respondents would submit that he has no objection in the I.A.No.2 of 2020 being allowed. He would submit that the respondents being poor ladies and villagers were not properly advised and there is no limitation for impleading the correct Insurance Company and he would pray that the application to implead the correct respondent may also directed to be allowed and a direction may be issued to the concerned Tribunal to dispose MCOP No.1660 of 2007 within a specified period after the correct Insurance Company is impleaded as second respondent.

8. In view of the above, the Civil Revision Petition stands allowed. The petition and order dated 21.10.2016 made in REA No.64 of 2016 in REP No.92 of 2016 on the file of the I Additional District Judge, Salem, is set aside.

9. A direction is issued to the Motor Accident Claims Tribunal, Salem/I Additional District Judge, Salem, to allow I.A.No.2 of 2020 and also the petition filed by the respondents to implead the correct Insurance Company and see to that the MCOP No.1660 of 2007 is disposed in an expeditious manner preferably within a period of six months from 21.06.2021.

10. With the above observations, this Civil Revision stands allowed. Consequently, connected Miscellaneous Petition is closed. No Costs.

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To

Motor Accident Claims Tribunal, Salem/

I Additional District Judge, Salem.



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