

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2020

PRONOUNCED ON : 21.01.2021

CORAM

THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

CRP(NPD). No.4596 of 2014

1. Aroquiadasse
2. Navaraj (deceased) ... Petitioners

Vs.

1. Lakshmanan
2. The Divisional Manager,
United India Insurance Company Ltd,
Puducherry. ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order in I.A.No.632 of 2013 in MACTOP.No.1144 of 2007 dated 17.04.2014 on the file of the III Additional District Judge, Puducherry.

For Petitioners ... Mr.V.Ajayakumar

For Respondents ... Mr.S.Arun Kumar for R2
No appearance for R1

ORDER

This Civil Revision Petition has been filed by the Petitioner / legal representative of the deceased petitioner Navaraj against the dismissal of his application in I.A.No.632 of 2013 in MACTOP.No.1144 of 2007 on the file of the III Additional District Judge, Puducherry dated 17.04.2014.

2. The petitioner herein had filed an application in I.A.No.632 of 2013 in MACTOP.No.1144 of 2007 on the file of the III Additional District Judge, Puducherry, under Rules 237 (8) & (9) of Pondicherry Motor Vehicle Rules 1989, to pass an order to permit him to withdraw the award amount of Rs.2,80,538/- with accrued interest. The learned III Additional District Judge, Puducherry, by the order dated 17.04.2014, had dismissed the said application. Feeling aggrieved, the petitioner therein had filed the present Civil Revision Petition.

3. Heard Mr.V.Ajayakumar, learned counsel for the petitioner and Mr.S.Arun Kumar, learned counsel for the second respondent/Insurance Company.

4. The learned counsel for the petitioner has submitted that one Navaraju had filed MACTOP.No.1144 of 2007 on the file of the III Additional District Judge, Puducherry, claiming compensation of Rs.5 lakhs for the death of her father Asirvatham in a motor accident. He further submitted that the Motor Accident Claims Tribunal had partly allowed the said petition and awarded Rs.2,20,000/- as compensation with interest @ 7.5% p.a. He further submitted that in pursuance of the said award, the second respondent/Insurance Company had deposited the said award amount with interest and costs, before the Tribunal. He further submitted that the said Navaraj died leaving behind the petitioner herein as her legal heir. He further submitted that the petitioner herein had filed a suit in O.S.No.542 of 2013 on the file of the Principal District Munsif, Puducherry, to declare him as legal representative of the said Navaraj and the said suit was decreed on 03.09.2013. He further submitted that based on the aforesaid judgment and decree passed in the suit, the petitioner herein had filed an application in I.A.No.632 of 2013 in MACTOP.No.1144 of 2007 seeking permission of the Tribunal for withdrawing the award amount.

5. The learned counsel for the petitioner has further submitted that the learned Tribunal had dismissed the said application on the ground that the said Navaraj is a female, but in the death certificate produced before the Civil Court, it has been mentioned as male and also on the ground that the said Navaraj died even prior to passing of the award and hence, the award which was passed in favour of the dead person cannot be enforced. He further submitted that the learned District Munsif, after considering the oral and documentary evidence, had decreed the suit declaring that the petitioner herein is the sole legal heir of the deceased Navaraj and the said decree will bind upon the Tribunal. He further submitted that even though it is stated that the said Navaraj died on 25.01.2012, the learned Tribunal had passed an award on 27.02.2012 and accepting the said award, the second respondent/Insurance Company had deposited the award amount with interest and costs before the Tribunal and as such, the Tribunal ought to have allowed the application filed by the petitioner to withdraw the said award amount. He further submitted that apart from the petitioner, no other persons came forward claiming that they are also legal heirs of the said Navaraj and under the said circumstances, the learned Tribunal should not have dismissed the petitioner's application and therefore, he prayed to allow

this Civil Revision Petition and set aside the order passed by the learned III Additional District Judge, Puducherry, dated 17.04.2014 and allow the said application.

6. Per contra, the learned counsel for the second respondent/Insurance Company has submitted that when the MACTOP.No.1144 of 2007 was posted for appearance of the petitioner therein viz., Navaraj on 22.02.2012, the petitioner's counsel therein had filed a memo stating that the said Navaraj was admitted in the hospital. In the application filed by the petitioner herein in I.A.No.362 of 2013 in MACTOP.No.1144 of 2007, the petitioner herein had stated that the said Navaraj died on 25.01.2012 itself and as such, the learned counsel who appeared for the petitioner/claimant in MACTOP.No.1144 of 2007 had misrepresented before the court that on 22.02.2012, the said Navaraj was alive and she was admitted in the hospital. He further submitted that since the said Navaraj died on 25.01.2012 itself and only thereafter, an award was passed in MACTOP.No.1144 of 2007 on 27.02.2012, the said award has been passed in favour of the dead person and the same is nullity and taking into consideration the aforesaid facts, the learned Tribunal had rightly

dismissed the application filed by the petitioner and in the said order, this court need not interfere and therefore, he prayed to dismiss this Civil Revision Petition.

7. A perusal of the typed set of papers filed by the petitioner herein and also the second respondent shows that one Navaraj, W/o. of Laxmananan had filed MACTOP.No.1144 of 2007 on the file of the Motor Claims Tribunal (III Additional District Judge), Puducherry, claiming compensation of Rs.5 lakhs for the death of her father Asirvatham in a motor accident which took place on 16.03.2006. During enquiry, in the said MACTOP, the said Navaraj examined herself as PW1 and also examined one more witness as PW2 on her side and marked 10 Exhibits as Exs.P1 to P10. On the side of the 2nd respondent/Insurance Company, one witness was examined as RW1 and no exhibits were marked.

8. The learned counsel for the second respondent / Insurance Company has filed a xerox copy of the docket orders (notes papers) passed in MACTOP.No.1144 of 2007. A perusal of the said document shows that

on 16.02.2012, evidence was closed on the side of the respondents and the matter was posted to 20.02.2012 for arguments. On 20.02.2012, the respondents' side counsel had argued and the matter was adjourned to 22.02.2012 for the petitioner's side arguments and also for appearance of the petitioner. On 22.02.2012, the petitioner did not appear. The petitioner's counsel had filed a memo and the same was recorded and after hearing both sides, the matter was adjourned to 23.02.2012 for orders and again it was adjourned to 27.02.2012. On 27.02.2012, an award was passed.

9. Though the learned counsel for the second respondent / Insurance Company has submitted that on 22.02.2012, the learned counsel for the petitioner therein filed a memo stating that the petitioner therein namely Navaraj was admitted in a hospital, in the aforesaid docket order, it has been simply mentioned as memo filed by the learned counsel for the petitioner. It is not known what was mentioned in the said memo. Even assuming that in the said memo, the learned counsel for the petitioner therein had stated that the petitioner therein viz., Navaraj was admitted in a hospital, it is not known on what basis, the said counsel had filed such a memo.

10. The only objection raised by the learned counsel for the second respondent/Insurance Company is that the said Navaraj died on 25.01.2012, whereas the award was passed on 27.02.2012 and the said award was passed in favour of the dead person and as such, the said award is nullity. As per Article 120 of the Limitation Act, an application to implead the legal representatives of the deceased plaintiff has to be filed within 90 days from the date of death of the plaintiff. In case, no application is filed to implead the legal representatives within the aforesaid period, then only the lis will abate. In this case, the proceedings initiated is under the Motor Vehicles Act. So, the Civil Procedure Code will not apply strictly. Even assuming that the Civil Procedure Code will apply, as already pointed out that only after expiry of 90 days from the date of death of the petitioner, the lis will abate. In this case, the original claimant namely Navaraj said to have been died on 25.01.2012, whereas an award was passed on 27.02.2012, i.e., within 90 days from the date of death of the original claim. So, the lis was not abated by the death of the original claimant and that being so, it cannot be said that the said award is nullity. This court is of the view that merely because the counsel filed a memo mentioning the wrong particulars, the parties should not be allowed to suffer especially, when there is no other

rival claimant. In this case, admittedly, the petitioner herein obtained a decree from the civil court as he is the sole legal heir of the deceased Navaraj. The said decree will bind upon the Tribunal. Therefore, the Tribunal ought to have permitted the petitioner herein to withdraw the amount which was deposited by the second respondent/ Insurance Company towards the compensation awarded in the aforesaid matter. If the second respondent feels that the learned counsel for the petitioner therein filed a memo with wrong particulars, it is always open to the second respondent, to take appropriate action against the said counsel.

11. For the aforesaid reasons, the order passed by the learned Tribunal / III Additional District Judge, Puducherry in I.A.No.632 of 2013 in MACTOP.No.1144 of 2007 is liable to be set aside.

12. In the result, this Civil Revision Petition is allowed. No costs. Order passed in I.A.No.632 of 2013 in MACTOP.No.1144 of 2007 dated 17.04.2014 on the file of the III Additional District Judge, Puducherry, is set aside and accordingly, the said application is allowed. The learned

Tribunal/III Additional District Judge, Puducherry, is directed to permit the petitioner herein to withdraw the aforesaid amount on condition that the petitioner herein shall file an undertaking affidavit that he will re-deposit the said amount as and when required by the Tribunal.

21.01.2021

Index: Yes/No
Speaking/Non-speaking Order
gv

To

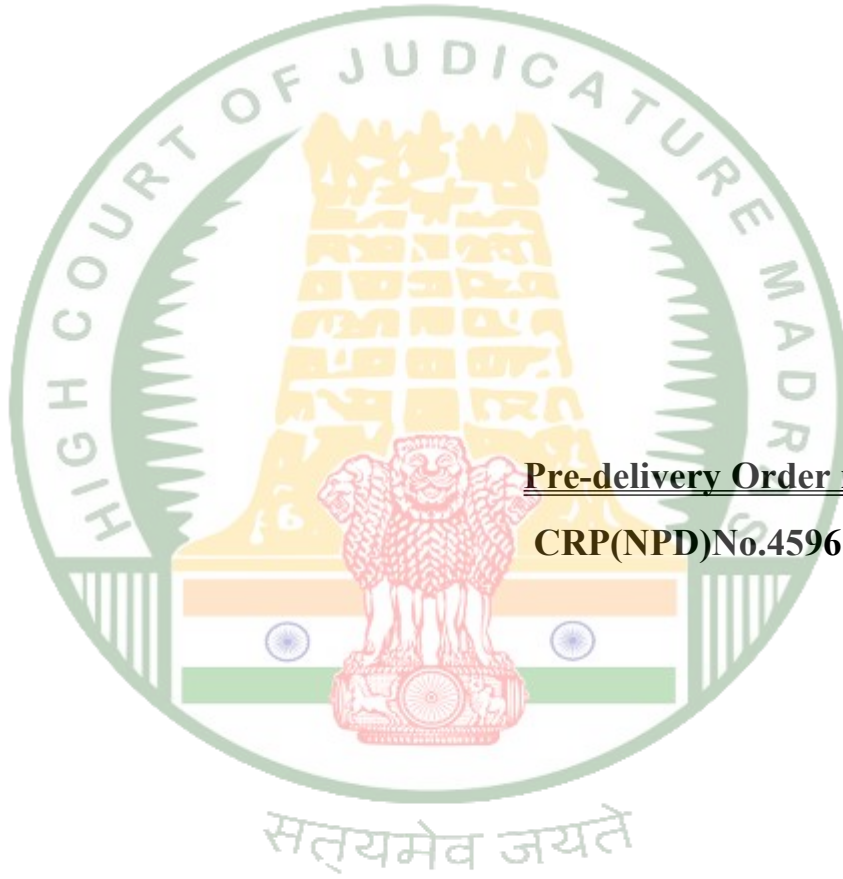
The III Additional District Judge,
Puducherry.



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P. RAJAMANICKAM,J.

gv



Pre-delivery Order made in
CRP(NPD)No.4596 of 2014

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