

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM

The Hon'ble Mr.Justice Krishnan Ramasamy

**C.R.P (NPD)No.4367 of 2013
and
M.P.No.1 of 2013**

C.Viji

..Revision Petitioner

VS.

1.Padmasini
2.P.Mahadevan
3.P.Subramani
4.P.Sathishkumar
5.P.Sureshkumar

..Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India praying to direct the learned Motor Accident Claim Tribunal cum Sub-Court, Thirupattur, Vellore District to take the I.A.SR.No.9749 of 2010 in I.A.SR.No.730 of 2010 in M.C.O.P. No.116 of 2006 on its file and to dispose of the same on merits..

For Revision Petitioner : M/s.S.Sathish Rajan

For Respondents 1 to 4 : Mr.PA.Sudesh Kumar

For Respondent 5 : No appearance

ORDER

This Civil Revision Petition is filed against the rejection of the application filed by the revision petitioner in I.A.SR.No.9749 of 2010 in I.A.SR.No.730 of 2010 in M.C.O.P. No.116 of 2006 on the file of the Sub Court, (Motor Accident Claim Tribunal), Thirupattur, Vellore District,

2. The revision petitioner herein is the first respondent in the aforesaid Claim Petition and the respondents 1 to 5 herein are the claimants thereunder.

2.1 The respondents/claimants initiated claim proceedings against the first respondent/revision petitioner and second respondent/Insurance Company, claiming a sum of Rs.15,00,000/-

2.2. The Court below, vide a judgment and decree, dated 18.04.2009, fastened entire liability on the first respondent/revision petitioner and directed him to pay a compensation of Rs.3,54,000/- with interest at 6% p.a. and exonerated the Insurance Company from liability.

2.3. Aggrieved against the said ex parte decree passed against the revision petitioner/first respondent, whereby, entire liability was fastened on him, he filed an Interlocutory Application to set aside the said ex parte decree along with a condone delay application. The Court below rejected the said Application without even numbering the same. Hence, this Civil Revision Petition.

3. The learned counsel appearing for the revision petitioner submits no notice was served on the revision petitioner and without even hearing him, the Court below passed an award, dated 18.04.2009, thereby, directing him to pay the entire compensation, and that, the revision petitioner came to

know about the fact that the award was passed only when the claimants initiated the Execution Proceedings against him. In these circumstances, the revision petitioner filed an application to set aside the ex-parte award passed by the Claims Tribunal and to re-open and re-hear the case and as abundant caution, he also filed an Application to condone the delay in filing the application to set aside the said ex parte decree. However, the same was returned by the Court below without even numbering the same.

3.1 Further, learned counsel for the revision petitioner submitted that it is the grievance of the revision petitioner that the rider of the two wheeler was not even examined so as to find out the fact whether he had license or not and even assuming that the rider of the two wheeler did not possess license, the Court below ought to have applied pay and recovery theory, and without doing so, Court below, straightaway directed the revision petitioner to pay the entire compensation. Furthermore, the learned counsel submitted that, in the event, the rider of the two wheeler possess license, the Insurance Company is liable to

pay the compensation.

3.2 Therefore, the learned counsel submitted that the rights of the revision petitioner would be prejudiced, if the Claim Petition is not re-opened and he is re-heard. Hence, the learned counsel prayed for allowing the Civil Revision Petition.

4. Per contra, the learned counsel for the respondents 1 to 4 submits that since the Court below found that the accident occurred due to rash and negligent act of the rider of the two-wheeler, who did not possess valid license, entire liability was fastened on the first respondent/revision petitioner/owner of the vehicle and directed him to pay the compensation, and that, since the first respondent/revision petitioner did not diligently contested the Claim Petition, he was set ex parte. Therefore, the learned counsel submitted that no useful purpose would be achieved in re-opening and re-hearing the claim proceedings once again.

5. Heard the learned counsel appearing for the revision petitioner and the learned counsel for respondents 1 to 4. Though notice was served on the fifth respondent and his name is printed in the cause list, none appeared on his behalf.

6. It is settled legal position of law that, anything and everything has to be heard by providing opportunities to both the parties and the Court below should see through it that there was no violation of principles of natural justice. It is not fair on the part of the Court below to reject the application by citing the reason that the second respondent/Insurance Company was heard and those reasons cannot be accepted by this Court, and the first respondent/revision petitioner needs to be heard and thereafter, liability has to be fastened against him, if at all, there is any liability that can be fastened as per law.

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6.1 Therefore, the rejection of the application at the Sr stage itself by the Court is not proper. The Court below ought to have

numbered the application and provided opportunities to both sides and thereafter, decided the matter on merits. Such exercise having not been done by the Court below, this Court finds that there was serious lapse on the part of the Court below in the decision making process.

6.2 Hence, this Court is inclined to direct the Court below to number the un-numbered application filed by the revision petitioner and decide the matter on merits after giving opportunity to the parties in the proceedings.

7. In the result, this Civil Revision Petition is disposed of, by directing the Court below to number the application, and dispose of the same within a period of two weeks. Since the matter is kept pending for a very long time, nearly for a decade, this Court directs the Court below to number the application within 2 weeks from the date of receipt of copy of this order, and thereafter, pass orders in the application within a period of 6 months from the date of first hearing of

the said application. No costs. Consequently, the connected miscellaneous petition is closed.

22.09.2021

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

Note :

Registry is directed to return the originals,
viz., I.A.Sr.No.9749/2010, in I.A.Sr.No.730/2010,
in M.C.O.P.No.116 of 2006, if any, filed by the
Revision Petitioner.

To
The Sub Judge,
Motor Accident Claim Tribunal, Thirupattur,
Vellore District

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Krishnan Ramasamy, J.,
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