

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.09.2021
CORAM

The Hon'ble Mr.Justice Krishnan Ramasamy

CRP (NPD)No.1508 of 2017

and

C.M.P.No.7017 of 2017

V. Sambanthan .. Revision Petitioner

VS

1. S.Ravi

2. R.Varalakshmi

..Respondents

PRAYER:-

Civil Revision Petition filed under Section 115 CPC against the fair and decreetal order, dated 20.02.2017, made in un-numbered I.A.No. of 2016 in M.C.O.P.No.113 of 2005, on the file of the Motor Accident Claims Tribunal, Sub Court, Madurantakam.

For Petitioner : Mr.N.Balaji

For Respondents : Mr.Sriram for
Mr.K.Govi Ganesan

ORDER

This Civil Revision Petition has been filed under Section 115 CPC against the order, dated 20.02.2017, made in un-numbered I.A.No. of 2016

in M.C.O.P.No.113 of 2005, on the file of the Motor Accident Claims Tribunal, Sub Court, Madurantakam.

2. The revision petitioner herein is the first respondent in the claim petition and the respondents 1 and 2 herein are the claimants in M.C.O.P.No.113 of 2005. The Insurance Company has not been impleaded as party respondent either in the Civil Revision Petition or in the Un-numbered Application.

3. The claim petition was filed by the respondents herein against i) revision petitioner/owner of the Tractor, ii) owner of the auto rickshaw and iii) M/s.United India Insurance Company, claiming compensation of a sum of Rs.4,00,000/-.

4. The Court below passed a final decree on 28.11.2012 by setting ex parte the respondents 1 and 2 in M.C.O.P.No.113 of 2005.

5. The learned counsel appearing for the revision petitioner submits that there were three respondents in the Claim Petition, the first respondent is the owner of the tractor, the second respondent is the owner of the Auto Rickshaw and third respondent is the Insurance Company. The learned counsel further submitted the main grievance of the revision petitioner is that, no notice was served on him and without hearing him, the Court below passed the award, directing him to pay 50% of the award, and he came to know about the passing of final decree only after 1428 days. Immediately thereafter, he filed an application to set aside the ex parte decree along with a Condone Delay Application. However, the Court below, without even numbering the Condone Delay Application, rejected the same on the sole ground that the second respondent participated in the proceedings and award was passed on merits.

5.1 Therefore, the learned counsel contended that the rights of the revision petitioner would be prejudiced, if he is not heard in the Claim Petition and hence, he prayed for allowing the Civil Revision Petition.

6. The learned counsel for the respondents submitted that since the first respondent did not diligently contested the Claim Petition, he was set ex parte by the Court below and award was passed and the same requires no interference. However, the learned counsel submitted that if this Court is desirous of allowing the Revision Petition, the same may be considered on imposition of heavy cost on the revision petitioner.

7. Heard the learned counsel for the revision petitioner and the learned counsel for respondents and perused the materials placed on record.

8. A perusal of the award shows that the award was passed only on hearing the claimants and the third respondent/Insurance Company in the Claim Petition and directed both the first respondent/revision petitioner and third respondent/Insurance Company to pay 50% of the award amount equally to the claimants. Aggrieved over the said ex parte decree, the first respondent has filed an Application to set aside the ex parte decree along with a Condone Delay Application. The Court below, without even numbering the Condone Delay Application, rejected the same on the ground

that the award was passed on merits as the second respondent has participated in the proceedings.

9. It is a trite law that, whenever, Application is filed to set aside the ex parte decree, along with Condone Delay Application, it is the bounden duty of the Court below to see through it as to whether the delay has been explained properly or not, whether the petitioner has shown sufficient reasons for the delay, and whether the evidence produced in support of such condone delay application is authentic or not and all these issues can be considered only after numbering the application and thereafter, the matter has to be decided on merits. However, in the instant case, the application was rejected by the Court below on the sole ground that the award was passed on merits after hearing the second respondent, when the fact remains that the second respondent was set ex parte. Therefore, the reasons provided by the Court below for refusing to number the application is not proper. Hence, this Court is inclined to allow the Civil Revision Petition.

10. In the upshot, this Civil Revision Petition is allowed, the impugned order passed in un-numbered I.A.No of 2016 in M.C.O.P.No.113 of 2005, is hereby set aside and the Court below is directed to number the un-numbered Application within two weeks from the date of receipt of a copy of this order and thereafter, dispose of the same within four months. No costs. Consequently, connected miscellaneous petition is closed.

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

To

The Sub Judge, Madurantakam,
Motor Accident Claims Tribunal,



WEB COPY

Krishnan Ramasamy, J.,
sd



CRP (NPD)No.1508 of 2017

07.09.2021

WEB COPY