

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD)No.3913 of 2018
and CMP No.21746 of 2018

Gomathi

.... Petitioner

Vs

1.Natarajan

2.The Zonal Manager,

Royal Sundaram Insurance Company,

No.5, G, 3rd Floor, Lawrence Road,

Cantonment, Trichy

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 06.04.2018 made in I.A.No.217 of 2017 in MACTOP No.246 of 2012 on the file of Motor Accident Claims Tribunal, Vridhachalam.(III Additional District and Sessions Judge), Cuddalore at Vridhachalam.

For Petitioner : Mr.S.Senthilnathan

For 1st respondent : Mr.K. Sankar

For 2nd respondent : Mr.M.B.Raghavan

ORDER

The Civil Revision Petition is filed challenging the order passed in I.A.No.217 of 2017 in MACTOP No.246 of 2012 dated 06.04.2018 by the Motor Accident Claims Tribunal, Vridhachalam (III Additional District and Sessions Judge, Cuddalore at Vridhachalam).

2. Since the Revision Petitioner remained absent, an ex-parte decree was passed on 12.04.2016 in M.C.O.P.No.246 of 2012. Thereafter, the revision petitioner filed an application in I.A.No.217 of 2017 to condone the delay of 220 days in filing the petition to set aside the ex-parte decree.

3. Learned counsel for the petitioner submitted that originally the petitioner was set ex-parte by virtue of the order of the Court below on 23.01.2013. In the affidavit, filed in support of the petition, the revision petitioner has stated that she was suffering from Jaundice and as per Doctor's advise, she took bed rest and hence she has not filed the application to set aside the ex-parte decree in time. Further, the revision petitioner has stated that she came to know about the ex-parte decree, passed in MACTOP No.246 of 2012, only when she met his counsel.

4. Subsequently, the revision petitioner filed an application in I.A.No.217 of 2017 to condone the delay of 220 days in filing the petition to set aside the ex-parte decree. The trial Court dismissed the application in I.A.No.217 of 2017, finding that the revision petitioner has not produced any medical records to substantiate the said averment.

5. The learned counsel for the revision petitioner submitted that the entire liability has been fastened against the revision petitioner though the vehicle was insured with the second respondent. Since the first respondent got injured when he was travelling with the vehicle of the revision petitioner, the Court below found that the first respondent was travelling as a gratuitous passenger and therefore, it has exonerated the second respondent Insurance Company from the entire liability and held that the owner of the vehicle (revision petitioner herein) is liable for the entire amount of Rs.7,34,200/-(Rupees seven lakhs thirty four thousand two hundred only). He further submitted that unless and otherwise the ex-parte order is set aside, the revision petitioner will be prejudicially affected.

6. Learned counsel for the first respondent / claimant has strongly opposed that the delay is not 220 days and it will be even much more because the revision petitioner was set ex-parte on 23.01.2013 and if so, the delay will be more than 1000 days. Taking into consideration of all these aspects, the Court below has correctly dismissed the petition for condoning the delay.

7. In reply, learned counsel for the revision petitioner submitted that she has filed a petition to set aside the ex-parte decree along with the petition to condone the delay. The order passed on 23.01.2013 will get merged with the ex-parte decree passed by the Court below dated 12.04.2016 and there is no need to set aside the ex-parte decree and it is a settled position of law by this Court as well as Apex Court. He relied on a decision of order of this Court in CRP(PD)(MD)Nos.1267 and 1268 of 2008 (*Kasturi and Others vs Saravanan@ Sakthi Saravanan*) reported in CDJ 2010 MHC 3585.

8. Heard both sides and perused the materials available on record.

9. Upon perusal of the records, it appears that the revision petitioner is the owner of the vehicle. The injured has filed a claim petition in MCOP

No.246 of 2012. Due to non-appearance of the revision petitioner on 23.01.2013, the Court below passed an exparte-decree on 12.04.2016, awarding a sum of Rs.7,34,200/- along with interest and so far as the liability is concerned, the Court below exonerated the Insurance Company, since the person, who travelled in the vehicle was treated as gratuitous passenger and fastened the entire liability against the owner of the vehicle, who is the revision petitioner herein.

10. When the matter came up for admission, this Court on 07.12.2018 granted interim stay on condition that the revision petitioner (owner of the vehicle) deposits a sum of Rs.3,00,000/-(Rupees three lakhs only) to the credit of EP No.3 of 2017 in MCOP No.246 of 2012 before the Motor Accident Claims Tribunal, Vridhachalam (III Additional District Sessions Judge) (Full Additional Charge), Cuddalore at Vridhachalm.

11. Learned counsel for the revision petitioner submitted that he deposited a sum of Rs.3,00,000/-(Rupees three lakhs only) on 04.01.2019 and the Court below without hearing the owner of the vehicle, passed an exparte award and the entire liability was fastened on the owner of the vehicle which is

not proper. However, this Court does not find fault in passing the ex-parte decree. But in the interest of justice, the owner of the vehicle could have been given an opportunity. Obviously, the ex-parte order dated 23.01.2013 will get merged with the award dated 12.04.2016. Taking note of the proposition of law, this Court is inclined to condone the delay.

12. Accordingly, the delay is condoned and the petition in I.A.No.217of 2017 is allowed on condition that the revision petitioner deposits a further sum of Rs.2,00,000/-(Rupees Two lakhs) to the credit of EP No.3 of 2017 in MCOP No.246 of 2012 on the file of Motor Accidents Claims Tribunal, Vridhachalam (III Additional District and Sessions Judge, Cuddalore at Vridhachalam) apart from the deposit of Rs.3,00,000/-(Rupees three lakhs only) already made on 04.01.2019 within a period of eight weeks from the date of receipt of a copy of this order.

13. The Court below is directed to dispose of the petition to set aside the ex-parte decree within a period of four weeks thereafter. Even if the revision petitioner has not deposited the award amount, the Court below in case is inclined to set aside the ex-parte decree, can do so with the condition to comply

with the order passed by this court for depositing the amount of Rs.2,00,000/- (Rupees Two lakhs only), and thereafter the Court below shall pass the final order within a period of four months.

14. With the above observations, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

24.03.2021

Index: Yes/No
Speaking order/Non-speaking order
sr

To

Motor Accident Claims Tribunal, Vridhachalam.

(III Additional District and Sessions Judge),
Cuddalore at Vridhachalam.

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KRISHNAN RAMASAMY,J.

sr



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