



WEB COPY



CRP No.2209 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2209 of 2019

Indrajith

..Petitioner

Versus

Ulaganathan

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and final order dated 13.03.2019 in I.A.No.408 of 2018 in M.C.O.P.No.132 of 2008 on the file of Subordinate Court, Jayankondam.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.P.Parthi Kannan
for Mr.S.Kaithamalai Kumaran

ORDER

The civil revision petition has been filed as against the the fair and final order dated 13.03.2019 in I.A.No.408 of 2018 in M.C.O.P.No.132 of 2008 on the file of Subordinate Court, Jayankondam, thereby dismissing the petition filed seeking to condone the delay for setting aside the exparte decree.

2. The petitioner is the first respondent in the claim petition filed by the



respondent herein in M.C.O.P.No.132 of 2008. The respondent filed the said M.C.O.P. claiming compensation of Rs. 5 lakhs on the premise that on 06.07.2006 at about 09.00 am, when the respondent was walking on the left side of the main road from south to north direction near Karadikulam Burial ground. At that time, the petitioner herein driving Bajaj CT 100 motor cycle bearing No.TN 46E 0204 came in a rash and negligent manner from the opposite direction and dashed against the respondent. Due to the accident, the respondent sustained fracture in the right hand in between right hand and elbow, severe blow in the back side of the head, chest and rib portions. Immediately, he was admitted in the Government Hospital, Jayakondam. For the further treatment, the respondent was admitted at Thanjavur Medical College Hospital for four days, wherein, he had spent Rs.50,000/-.

3. Pursuant to the same, Jayakondam Police Station registered a case against the petitioner herien in Cr.No.388/2008 under Sections 279 & 337 IPC. Hence, the respondent filed the said claim petition seeking for compensation owing to the injuries sustained by him due to the accident caused by the petitioner herein. On receipt of the notice from the claim petition, the petitioner did not appear before the Trial Court. Therefore, he was set exparte and the claim petition was allowed as prayed for. In order to execute the Order passed



by the Tribunal, the respondent filed Execution Petition in E.P.No.21/2015 in which notice was ordered to the petitioner herein. After receipt of the notice, the petitioner came to understand about the exparte order and filed a petition to set aside the exparte decree with an exorbitant delay of 3050 days.

4. On perusal of the affidavit filed in support of condoning the delay in filing the application to set aside the exparte decree, it would indicate that only after the receipt of notice from the execution, he came to understand about the exparte decree. Before that he was suffering from jaundice and took native treatment and as such not able to contact his advocate. Therefore, the delay was not wilful nor wanton.

5. Heard both sides and perused the materials placed on record. Though the petitioner stated that he was suffering from jaundice, he failed to substantiate the same with any proper evidences and he was not even examined before the Trial Court to explain such exorbitant delay. The petitioner only had committed the accident, due to which, an FIR is registered against him. He knows very well the fact that he had caused the grave injuries. Therefore, he is liable to pay the compensation, if any claim petition is filed for injuries sustained by the claimant/the respondent herein.



CRP No.2209 of 2019

WEB COPY

6. Admittedly, the respondent/claimant sustained fracture and suffered bodily injuries. Therefore, the respondent filed the claim petition seeking compensation of Rs. 5 lakhs. Therefore, the petitioner wilfully and wantonly failed to appear before the Court below and also failed to file the petition in-time seeking to set aside the exparte decree passed against the petitioner herein and had filed the same with an exorbitant delay of 3050 days that too without any proper explanations or reasons. Hence, the Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the orders passed by the Court below.

7. In view of the above, the civil revision petition stands dismissed. No costs.

12.12.2022

Speaking/Non-speaking order

Index : Yes/No

dhk

To

Subordinate Court, Jayankondam.

G.K.ILANTHIRAIYAN.J.



WEB COPY



CRP No.2209 of 2019

dhk

CRP.No.2209 of 2019

12.12.2022