



C.R.P.(PD).No.4151 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4151 of 2014

Kumaresan

.. Petitioner

Vs.

1.Paramasivam

2.The President,
Institute of Co-operating Management,
Chinnatappu,
P.D.C. Post,
Madurai.

3.The National Insurance Co. Ltd.,
Branch Office,
No.661, Trunk Road,
Poonamallee.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and award dated 19.08.2011 made in I.A.No.738 of 2011 in M.C.O.P.No.638 of 2011 on the file of the Sub Court, (Motor Accident Claims Tribunal), Dharapuram.



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For Petitioner : Mr.Venkatesan
for M/s.P.P.Shanmugasundaram

For Respondents : No appearance (For R2 & R3)

ORDER

(The matter is heard through 'video conferencing')

This Civil Revision Petition is filed against the judgment and award dated 19.08.2011 made in I.A.No.738 of 2011 in M.C.O.P.No.638 of 2011 on the file of the Sub Court, (Motor Accident Claims Tribunal), Dharapuram.

2.The petitioner is claimant in M.C.O.P.No.638 of 2011 on the file of the Sub Court, (Motor Accident Claims Tribunal), Dharapuram. He filed the said claim petition against the respondents, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.10.2000. According to the petitioner, on 29.10.2000, at 1.30 p.m, while he was riding the Motorcycle, a Car



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bearing Registration No.TN-58-D-6640, owned by the 2nd respondent, driven by the 1st respondent and insured with the 3rd respondent came in the opposite direction in a rash and negligent manner and dashed against the Motorcycle in which the petitioner traveled and caused the accident. In the accident, the petitioner sustained grievous injuries and filed the present claim petition, claiming compensation against all the three respondents, stating that the 1st respondent is driver of the Car, 2nd respondent is owner and 3rd respondent is insurer of the Car. The respondents 1 and 2 remained exparte before the Tribunal. The 3rd respondent-Insurance Company filed counter statement, denying the manner of the accident. Before the Tribunal, the petitioner examined himself as P.W.1, one Dr.K.Periyasamy as P.W.2 and marked 6 documents as Exs.P1 to P6. The 3rd respondent-Insurance Company did not let in any oral and documentary evidence.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the 1st respondent, driver of the Car owned by the 2nd



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respondent and insured with the 3rd respondent-Insurance Company. The Tribunal, after holding so, awarded a sum of Rs.1,68,299/- as compensation to the petitioner. In the award, the Tribunal has held that the 2nd respondent, who is the insurer of the Car, is liable to pay compensation and dismissed the claim petition against the 3rd respondent. The petitioner filed I.A.No.738 of 2011 in M.C.O.P.No.638 of 2001, under Section 115 of C.P.C., for a direction to correct the mistake committed by him in the proof affidavit and prayed for a direction to include the 3rd respondent-Insurance Company also to pay the compensation along with the respondents 1 and 2.

4.The 3rd respondent-Insurance Company filed counter affidavit in the said application and submitted that if the petitioner is aggrieved by the award directing the respondents 1 and 2 to pay the compensation and dismissing the claim petition against the 3rd respondent, he has to file only appeal and petition filed for reviewing the award is not maintainable and prayed for dismissal of the application.



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5.The Tribunal considering the materials on record and accepting the contentions of the learned counsel appearing for the 3rd respondent-Insurance Company, dismissed the application.

6.Against the said order of dismissal dated 19.08.2011, made in I.A.No.738 of 2011 in M.C.O.P.No.638 of 2011, the petitioner has come out with the present Civil Revision Petition.

7.The 1st respondent remained exparte before the Tribunal and hence, notice to the 1st respondent is dispensed with. Though the 2nd respondent entered appearance through counsel, today there is no representation for him either in person or through counsel. Though notice has been served on the 3rd respondent-Insurance Company and their name is printed in the cause list, there is no representation for them either in person or through counsel.

8.Heard the learned counsel appearing for the petitioner and perused the materials available on record.



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9. From the materials on record, it is seen that the petitioner has filed claim petition claiming compensation against all the respondents. In the claim petition, it has been stated that the 1st respondent is driver, 2nd respondent is owner and 3rd respondent is insurer of the offending vehicle. It is the case of the petitioner that in the proof affidavit filed by him before the Tribunal in the claim petition, by mistake, he prayed for award against the respondents 1 and 2 only. A reading of the award shows that the Tribunal has stated that the offending Car has been insured with the 2nd respondent and directed the 2nd respondent to pay the compensation. This is obviously mistake occurred in the award as 3rd respondent is only insurer of the offending vehicle. It is the case of the petitioner that accident occurred only due to rash and negligent driving by driver of the Car owned by the 2nd respondent and insured with the 3rd respondent-Insurance Company. He let in both oral and documentary evidence and proved the same. It is not the case of the 3rd respondent-Insurance Company that vehicle was not insured with them at the time of accident. The 3rd respondent-Insurance Company did not let in any evidence to disprove the case of the petitioner. For the above reason, this Court is of



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the view that the learned Judge has committed an error in dismissing the claim petition against the 3rd respondent-Insurance Company after holding that the Insurance Company is liable to pay compensation. Hence, I.A.No.738 of 2011 in M.C.O.P.No.638 of 2011 filed by the petitioner is allowed and award of the Tribunal is modified, directing the 3rd respondent-Insurance Company to pay the compensation to the petitioner.

With the above directions, this Civil Revision Petition is allowed.

No costs.

04.01.2022

Index :: Yes/No
gsa

To

The Subordinate Judge,
(Motor Accident Claims Tribunal),
Dharapuram.



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V.M.VELUMANI, J.

gsa

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