



C.M.A.(MD)No.1476 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 08.08.2022

Delivered On : 29.08.2022

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.M.A.(MD)No.1476 of 2011

A.R.Krishnan

.. Appellant / Petitioner /1<sup>st</sup> Respondent

Vs.

1.R.Shanmugam

2.The Branch Manager,

National Insurance Company Limited,

T.S.No.4132, East Main Road,

Pudukottai District.

.. Respondents / Petitioners / Petitioner

**Prayer:** This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of the Code of Civil Procedure, to set aside the order and decree, dated 19.08.2011, passed in I.A.No.359 of 2011 in M.C.O.P.No.908 of 2003 on the file of the Motor Accident Claims Tribunal – Fast Track Court – Additional District and Sessions Judge, Pudukottai, to allow this appeal with cost.

For Appellant

: Mr.K.Gokul

For Respondents

: Mr.J.S.Murali for R2

: No appearance for R1



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## **JUDGMENT**

This Civil Miscellaneous Appeal has been filed to set aside the order and decree, dated 19.08.2011, passed in I.A.No.359 of 2011 in M.C.O.P.No.908 of 2003 on the file of the Motor Accident Claims Tribunal – Fast Track Court – Additional District and Sessions Judge, Pudukottai. The appellant herein is the petitioner in I.A.No.359 of 2011 and the first respondent in M.C.O.P.No.908 of 2003, the first respondent herein is the first respondent in I.A.No.359 of 2011 and the petitioner in M.C.O.P.No.908 of 2003 and the second respondent herein is the second respondent in both the I.A.No.359 of 2011 and in M.C.O.P.No.908 of 2003.

2. The original claim petition was filed claiming compensation for the injuries sustained by the claimant in an accident that took place on 01.07.2003, at about 08.00 am. While the petitioner was travelling as a pillion rider in a two wheeler, a bus bearing Registration No.TN-55-E-3229 was driven by its driver in a rash and negligent manner, dashed against the two wheeler and the claimant sustained injuries. He claimed a sum of Rs.10,00,000/- as compensation. The Tribunal awarded a sum of Rs.2,31,556/- as compensation and ordered the Insurance Company to pay and recover. The first respondent-owner of the vehicle was set



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exparte before the Tribunal. After the judgment was passed, on 13.02.2006, the first respondent/owner of the vehicle came forward with a petition in I.A.No.359 of 2011. The Tribunal dismissed that petition. Against the same, the first respondent in the claim petition has come forward with this appeal.

3. Brief substance of the affidavit, in I.A.No.359 of 2011, is as follows:

The claimant filed a claim petition for the injuries sustained by him, on 01.07.2003. He has impleaded the petitioner as the first respondent, as the owner of the vehicle. The petitioner received the summon to appear on 06.02.2004. On 14.07.2003, he sustained injuries in an accident and he was bedridden. Copy of the wound certificate and copy of F.I.R were marked. Along with the petition, the petitioner has also filed copy of another claim petition in M.C.O.P.No.183 of 2006. Since the petitioner was taking treatment, he was unable to go out and to attend the Court. On 06.02.2004, he was set exparte, by the order, dated 13.02.2006, the second respondent was ordered to pay the first respondent as compensation of Rs. 2,31,552/- and the second respondent-Insurance Company was directed to recover the same from this petitioner. The petitioner came to know about the order only after receiving summons in the execution petition. Since the petitioner himself was undergoing treatment, he forgot about the notice received by him. The petitioner was having proper permit. Only on the ground that there was no permit, pay and



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recover order was passed by the Tribunal and hence, the exparte decree has to be set aside.

4. Brief substance of the averments filed by the second respondent, in I.A.No.359 of 2011, is as follows:

This petition is not maintainable. The petitioner was set exparte, on 06.02.2004. The second respondent deposited the amount and for recovery of the same, the second respondent filed a petition in E.P.No.77 of 2007. The first respondent withdraw the amount from the Court. The petitioner, without preferring an appeal, has filed this petition, only to drag on the proceedings.

5. After considering both sides, the Tribunal dismissed the petition. Against the same, the appellant has preferred this Appeal on the following grounds:-

The Tribunal failed to consider that the appellant was set exparte as he could not appear, since he was met with an accident and was bedridden. The Tribunal failed to consider that the appellant was aware of the exparte order, only on receipt of notice in E.P.No.77 of 2007. The appellant is having a good case on merits.



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WEB COPY 6. On the side of the appellant, it is stated that the Tribunal has wrongly passed an order for pay and recover, on the only ground that there was no permit for the vehicle. The Tribunal failed to consider that the appellant was admitted in the Hospital and was taking treatment for the injuries sustained by him in another accident. It is prayed that an opportunity for the appellant to put forth his case has to be given in the interest of justice.

7. On the side of the second respondent – Insurance Company, it is stated that the award passed by the Tribunal was on merits, after full trial. Instead of filing an appeal under Section 173 of M.V. Act, the appellant has come forward with the petition to set aside the exparte decree, which is not maintainable. Order – 43, Rule -1 of the Code of Civil Procedure, is not applicable, when a Special Act and provisions are available, the course available to the appellant is to file an appeal, to set aside the entire award.

8. A perusal of the records reveals that the award passed by the Tribunal was on merits and after full trial. The appellant can file a petition to set aside the exparte order during the pendency of the claim petition. An order, after full trial cannot be considered as an exparte order. The course available to the appellant is to



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file an appeal against the award. Instead of filing an appeal, questioning the entire award, the appellant has chosen to file a petition to set aside the exparte order, which is not maintainable. Hence, liberty is given to the appellant, to file an appeal against the award.

9. With the above direction, this Appeal is dismissed. No costs.

**29.08.2022**

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal –

Fast Track Court – Additional District and Sessions Judge,

Pudukottai.

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.



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**R. THARANI, J.**

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Pre-delivery Judgment made in  
C.M.A.(MD)No.1476 of 2011

**29.08.2022**