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CRP.No.4417 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.4417 of 2015 and
MP.No.1 of 2015

B.Vetrivel

... petitioner

Vs.

K.R.Palanisamy

... Respondent

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 10.09.2015 in EA.No.67 of 2015 in EP.No.5 of 2013 in MCOP.No.486 of 2009 on the file of the I Additional Subordinate Judge of Erode.

For Petitioners : M/s.V.Srimathi

For Respondent : No appearance

ORDER

This civil revision petition has been filed to set aside the order and decretal order dated 10.09.2015 in EA.No.67 of 2015 in EP.No.5 of 2013 in MCOP.No.486 of 2009 on the file of the I Additional Subordinate Judge of Erode, thereby dismissed the application to condone the delay in filing the application to set aside the exparte order passed in the execution petition.



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2. The petitioner is the second respondent in the execution petition filed by the respondent herein. The respondent filed claim petition before the Motor Accident Claims Tribunal in MCOP.No.486 of 2009 as against the petitioner and others. The case of the respondent is that on 27.05.2009, when he was pulling his two wheeler along with his wife, the first respondent in the claim petition drove his vehicle in a rash and negligent manner and dashed against him. Therefore, he sustained grievous injuries. He lodged complaint and the same was registered in Cr.No.961 of 2009 for the offence punishable under Sections 279, 337 of IPC as against the first respondent in the claim petition. Thereafter, the respondent herein filed claim petition claiming compensation. Except the first respondent, all the respondents were set ex parte and the Claims Tribunal awarded compensation to the tune of Rs.65,300/- payable by the respondents 2 to 4 in the claim petition, in which the petitioner was shown as the second respondent. On the strength of the decree, the respondent filed execution petition. In the execution petition also, the petitioner received notice and he was set ex parte. Therefore, the petitioner filed petition to set aside the ex parte order passed in the execution petition with delay of 280 days in filing the petition to set aside the ex parte order.

3. On perusal of the affidavit filed in support of the condone delay application, revealed that he was suffering from jaundice and hepatitis 'B' during



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the month of January 2014 and had taken Indian Medicine treatment. Thereafter, he had to visit Ayurvedic Vidyasala at Kottayam, Kerala. Thereafter, he was bedridden and as such, there was a delay in filing the application to set aside the exparte order.

4. On perusal of records, revealed that the first respondent in the claim petition had driven the vehicle in a rash and negligent manner and caused grievous injuries to the respondent. The two wheeler which was ridden by the first respondent in the claim petition belonged to the father of the respondents 2 to 4 in the claim petition. There was no records to show that the said vehicle was sold out in favour of the first respondent in the claim petition by their father. The vehicle was not insured with any insurance company. Therefore, whatever the damages caused by the first respondent therein, the respondents 2 to 4 are being the legal heirs of the owner of the vehicle, liable to pay compensation. Therefore, the Tribunal rightly awarded compensation and payable by the respondents 2 to 4 in the claim petition. On receipt of notice from the Claims Tribunal as well as the Execution Court, the petitioner failed to appear before the court below. Therefore, the reasons stated in the affidavit filed in support of the condone delay petition also not satisfactory. As usual, the petitioner stated that he was suffering from jaundice. Therefore, the court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the court below. That apart, admittedly



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the two wheeler owned by the petitioner's father was not insured with any insurance company and as such the owner of the vehicle is liable to pay compensation. His father died and as such, the petitioner is one of the legal heirs, liable to pay compensation as awarded by the Tribunal. However, the petitioner is at liberty to recover the compensation amount which is paid by him from the first respondent in the claim petition in the manner known to law.

5. With the above observation, the civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

03.02.2023

Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To

The I Additional Subordinate Judge of Erode.

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