



C.R.P.No.2063 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 14.03.2023

Delivered On : 24.03.2023

CORAM :

THE HON'BLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

C.R.P.No.2063 of 2020

and

C.M.P.No.12968 of 2020

1.Kumar Automobiles,
Represented by its Proprietor,
Sakthi Nagar,
Arasur Anjal,
Sathyamangalam Taluk,
Erode District.

2.Doss Automobiles,
Represented by its Proprietor,
Sathi-Gopi Main Road,
Ariyappampalayam Post,
Sathyamangalam Taluk,
Erode District.

: Petitioner/Appellant/Respondent

-VS-

Kannammal

: Respondent/Petitioner/Respondent

PRAYER: Civil Revision Petition had been filed under Section 115 of Civil Procedure Code, praying to set aside the Order and Decretal Order in I.A.No.2 of 2019 in M.C.O.P.No.318 of 2016 on the file of the Sub Court, Sathyamangalam and prays that the Civil Revision Petition may be allowed.

For Petitioner : Mr.C.Jagadish



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For Respondent : Mr.M.Karthik
for Mr.I.C.Vasudevan

ORDER

This Civil Revision Petition had been filed seeking to set aside the Order and Decretal Order in I.A.No.2 of 2019 in M.C.O.P.No.318 of 2016 on the file of the Sub Court, Sathyamangalam.

2.The learned Counsel for the Revision Petitioners would submit that the Petitioners are the Second and Third Respondents in M.C.O.P.No.318 of 2016 on the file of the Sub-Court, Sathyamangalam.

3.The learned Counsel for the Revision Petitioners invited the attention of this Court to the typed set in which the copy of the Motor Accident Claims Original Petition is enclosed, in which Column No.15 relates to the Owner of the vehicle. Column No.16 relates to the address of the Insurer. Here in this case, in the place of Insurer in Column No.16, the Claimant had mentioned the name of the Proprietor “Kumar Automobiles, Sakthi Nagar, Arasur Post, Sathyamangalam Taluk, Erode District” and “Dass Automobiles, Sakthi-Gobi



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Main Road, Ariyampalayam Post, Sathyamangalam Taluk”, who were
impleaded as Respondents 2 and 3.

4.It is the submission of the learned Counsel for the Revision Petitioner that the Respondents 2 and 3 in M.C.O.P.No.318 of 2016 on the file of the learned Sub-Judge, Sathyamangalam received notice from the learned Motor Accident Claims Tribunal/Sub-Judge, Sathyamangalam and engaged a local Counsel to file counter and proceed with the case. Unfortunately, the local Counsel did not appear on the date of enquiry and also did not file counter. The Third Respondent Proprietor of Dass Automobiles is a Sub-Dealer of the Second Respondent. He was looking after the case. Therefore, because of the inadvertence on the part of the Third Respondent, they were set *ex parte*. The Respondents 2 and 3 in M.C.O.P.No.318 of 2016 came to know about the *ex parte* award passed against them only on receipt of the notice in the Execution Petition. Immediately, they had approached the Motor Accident Claims Tribunal/learned Sub-Judge, Sathyamangalam by filing the petition in I.A.No.2 of 2019 in M.C.O.P.No.318 of 2016 seeking to set aside the *ex parte* decree and



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award.

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5.After enquiry, the learned Sub-Judge, Sathyamangalam dismissed the petition on the ground that the person who sworn in the affidavit had stated that due to Jaundice he was unable to attend the Court on that day when the Respondents 2 and 3 were set *ex parte*.

6.Aggrieved by the order of dismissal of I.A.No.2 of 2019 in M.C.O.P.No.318 of 2016 by the learned Sub-Judge, Sathyamangalam, by order dated 19.12.2019, the Revision Petition has been filed by the Respondents 2 and 3 in the Motor Accident Claims Original Petition to set aside the order of the learned Sub-Judge, Sathyamangalam in I.A.No.2 of 2019 in M.C.O.P.No.318 of 2016 under Section 115 of the Code of Civil Procedure.

7.In support of the contention, the learned Counsel for the Revision Petitioner relied on the rulings of the Hon'ble Supreme Court in ***HDFC Bank Limited -Vs- Reshma and others*** reported in ***2015 (3) SCC 679*** that the



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liability to set aside the award is to the owner and not that of the financier.

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8.The learned Counsel appearing for the Revision Petitioner also placed reliance on the ruling reported in **2009 (5) CTC 414 [Pavayammal and another -Vs- S.N.Chockalingam and others]** for the proposition that the Court has to provide opportunities to the parties to prove their case, the Judiciary is respected not on account of its power to legalise injustice on technical grounds but it is capable of removing injustice and is expected to do so. This Court is of the considered view that substantial justice will have to be delivered to the parties overriding technicalities.

9. It is his further submission that the Manufacturer of the vehicle protects the Dealer till the vehicle is taken possession by the Purchaser of the vehicle. Here, in this case, the Purchaser had taken possession of the vehicle and had not registered it. By any means, the Respondents 2 and 3 in M.C.O.P. No.318 of 2016 cannot be proceeded against, as per the award passed by the learned Motor Accident Claims Tribunal / learned Sub-Judge, Sathyamangalam. Therefore, he seeks to set aside the order of dismissal of



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the Interlocutory Application and afford an opportunity to the Petitioners as Respondents 2 and 3 to agitate their rights before the learned Motor Accident Claims Tribunal.

10. The Respondent herein is the Claimant in M.C.O.P.No.318 of 2016. The Petitioner in this Civil Revision Petition was the Respondent in M.C.O.P.No.318 of 2016. The Petitioner herein as Respondent in M.C.O.P.No.318 of 2016 was set *ex parte* on 24.12.2016. The *ex parte* decree was passed on 13.12.2017. Based on the *ex parte* decree, the Respondent in the Civil Revision Petition/Claimant in M.C.O.P.No.318 of 2016 had filed execution petition in E.P.No.38 of 2018 which is still pending. The Petitioner in the Civil Revision Petition who is the Judgment Debtor in the E.P.No.38 of 2018 appeared on notice on 27.06.2018. He had filed counter in the E.P.No.38 of 2018 on 12.11.2018. Even at that time, he had not sought to set aside the *ex parte* order. After lapse of eleven months, this Petition is filed. There is a delay of 646 days from the date of passing of *ex parte* decree. The reasons stated in the affidavit of the Second Petitioner along with the first Petitioner is found unacceptable. The affidavit is filed by



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the second Petitioner. He claims that he was affected by jaundice but no documentary proof is filed. If that be so, what prevented the first Petitioner from filing the petition to set *ex parte* decree. There is no averments regarding the first Petitioner. Therefore, the submission regarding the merits of the case does not warrant any interference. The Petitioners are liable as per the Motor Vehicles Act for handing over possession of the Motor Vehicle without insurance. The Petitioners' contention cannot be accepted in the light of the reported ruling ***(2016) 4 SCC 82 [Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala -vs- K.T.C. Automobiles]*** wherein it is held that Transit Insurance will not cover the third party under the Insurance and it only covers the goods in transit from the place of manufacture till reaching its destination only for damages sustained on the way. As far as insurance cover is concerned, Insurance is protected for damages. The learned Counsel for the Respondent relied on the ruling reported in ***2015 (3) SCC 679 [HDFC Bank Limited -Vs- Reshma and others]*** and ***2009 (5) CTC 414 [Pavayammal and another -Vs- S.N.Chockalingam and others]***.

11.The learned Counsel appearing for the Respondent relied on the



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reported ruling in *(2016) 4 SCC 82 [Commissioner of Commercial Taxes,*

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Thiruvananthapuram, Kerala -vs- K.T.C.Automobiles/. This is a case where the vehicle purchased by the purchaser is treated as in the possession of the dealer till the possession is handed over to the purchaser before the Road Transport Authority for registration. Till it is registered, it is considered as in the possession of the dealer. It is stated that the dealer cannot permit the purchaser to use the motor vehicle and enjoy its possession unless and until temporary or permanent registration number is obtained by the purchaser. Therefore, here in this case, since the accident occurred when the first Respondent in the MCOP had used the vehicle before registration, the dealer is liable to pay compensation.

12.In the light of the rulings cited by the learned Counsel appearing for the Revision Petitioner and the learned Counsel appearing for the Respondent, the contention of the Respondent that the dealer is liable to pay compensation is found acceptable in the light of the rulings relied by the learned Counsel for the Respondent. The reasoned order passed by the learned Motor Accident Claims Tribunal does not warrant interference by



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this Court under Section 115 of the Code of Civil Procedure.

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In the result, **this Civil Revision Petition is dismissed.** No costs.

Consequently, the connected miscellaneous petition is closed.

24.03.2023

SRM

Index : Yes / No

Internet : Yes / No

Speaking Order / Non-Speaking Order

To

- 1.The Sub Court,
Sathyamangalam.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Order made in
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