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C.R.P.No.4472 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2023

CORAM

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

C.R.P.No. 4472 of 2017

and

C.M.P.Nos.21114 of 2017 & 15627 of 2018

K.Tamilselvan

....

Petitioner

Vs

1.M.Sathishkumar

2.K.A.Mohammed Yasir

3. The Royal Sundaram Alliance

Insurance Co., Ltd.,

Rep. by its Branch Manager,

46, Whites Road,

Chennai – 600 014.

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Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 25.10.2017 made in I.A.No.64 of 2016 in M.C.O.P.No.565 of 2010 on the file of the learned MACT/Sub Court, Sathyamangalam.

For Petitioner	:	Mr.N.Manokaran
For R1	:	Mr.S.Kaithamalai Kumaran
For R2	:	Ms.J.Prithivi
For R3	:	No appearance

ORDER



C.R.P.No.4472 of 2017

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This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 25.10.2017 made in I.A.No.64 of 2016 in M.C.O.P.No.565 of 2010 on the file of the learned MACT/Sub Court, Sathyamangalam, thereby dismissing the petition to condone the delay of 712 days in filing the petition to set aside the ex-parte award.

2. The claim petition was filed by the first respondent herein. The case of the first respondent is that on 16.06.2003, while he was riding in the unregistered new TVS Motor Cycle along with the second respondent herein as pillion rider, from Gobi Arts College to Gobi Bus Stand, at that time, the petitioner was riding his motor cycle in the opposite direction and dashed against the first respondent's vehicle. Therefore, the first respondent sustained grievous injuries. Immediately, he was taken to hospital for treatment. Hence, a compliant was lodged and FIR has been registered in Crime No.346 of 2003 as against the petitioner herein for the offences under Sections 279 & 337 of IPC. Thereafter, the first respondent filed a claim petition, claiming compensation for the injuries sustained by him, before the Subordinate Court, Gobichettipalayam. On receipt of the



C.R.P.No.4472 of 2017

WEB COPY

notice from the claim petition, the petitioner failed to appear before the Court and did not file any counter. Therefore, he was set ex-parte on 24.02.2006.

3. At that juncture, due to bifurcation of the Court, the claim petition was transferred from the file of the Subordinate Court, Gobichettipalayam to the file of the Subordinate Court, Sathyamangalam. Even thereafter, the transferee Court issued notice and on receipt of the said notice, again the petitioner failed to appear before the Trial Court. That apart, the first respondent failed to pursue the claim petition and as such, it was dismissed for default. Therefore, the first respondent filed a petition to restore the claim petition, in which the petitioner also duly served with notice. Even then, the petitioner did not appear before the Subordinate Court, Sathyamangalam. Only on receipt of the notice in execution petition, the respondent filed a petition to set aside the ex-parte award with a delay of 712 days in filing the petition.

4. A perusal of the affidavit filed in support of the condone



C.R.P.No.4472 of 2017

delay petition reveals that he was not served with any notice from the transferee Court. Therefore, he had no knowledge about the ex-parte award. Only after receipt of the notice from the execution petition, he came to know about the ex-parte award and he immediately engaged a counsel to file a petition to condone the delay of 712 days. However, it was not believed by the Court below and dismissed the same. Aggrieved by the same, the present Civil Revision Petition.

5. At the time of granting interim injunction, this Court imposed condition that the petitioner shall deposit 50% of the award amount. The said order was duly complied with by the petitioner. Considering the facts and circumstances of the case, the petitioner may be given one more opportunity to defend the claim petition on merits and in accordance with law.

6. In view of the above, the order dated 25.10.2017 made in I.A.No.64 of 2016 in M.C.O.P.No.565 of 2010 on the file of the learned MACT/Sub Court, Sathyamangalam, is hereby set aside. Accordingly, this



C.R.P.No.4472 of 2017

Civil Revision Petition stands allowed. The first respondent is permitted to withdraw the amount which was deposited by the petitioner. The Trial Court is directed to dispose of the claim petition within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

28.02.2023

Index:Yes/No
Internet:Yes/No
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To
The Subordinate Judge,
Sathyamangalam.

G.K.ILANTHIRAIYAN, J.



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C.R.P.No.4472 of 2017

Lpp

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