



C.R.P.No.3474 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

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

C.R.P.No.3474 of 2018
and C.M.P.Nos.19449 of 2018 & 9533 of 2021

Dr.Ram Mohan Rao

... Petitioner

Vs.

Sarangapani (Died)

1. K.Banumathi

2. M.Kumar

3. The Royal Sundaram Alliance

Insurance Co. Ltd.,

Sundaram Towers,

45-46, Whites Road,

Chennai – 600 014.

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the Sub Court, Pollachi to number the application in I.A. in C.F.R.No.6528 of 2018 in M.C.O.P.No.263 of 2008 on the file of the Motor Accident Claim Tribunal cum Sub Court, Pollachi, returned on 24.08.2018.

For Petitioner : Ms.A.L.Ganthimathi
For Ms.SA.Kanmani

For Respondents

For R1 to R3 : No appearance

For proposed R5 : Mr.S.Arun Kumar



C.R.P.No.3474 of 2018

ORDER

WEB COPY

The Civil Revision Petition has been filed to direct the Sub Court, Pollachi to number the application in I.A. in C.F.R.No.6528 of 2018 in M.C.O.P.No.263 of 2008 on the file of the Motor Accident Claim Tribunal cum Sub Court, Pollachi, returned on 24.08.2018, thereby rejecting the petition to condone the delay in filing the petition to set aside the exparte decree, as not maintainable.

2. The petitioner is the second respondent in the claim petition filed by the deceased respondent herein. The deceased respondent filed claim petition in M.C.O.P.No.263 of 2008 claiming a sum of Rs.10,35,000/- as compensation for the injury sustained by him. The case of the deceased respondent is that on 24.11.2007 at about 8.30 pm., when he was travelling in his Fiat Car bearing registration No.TN10-D-3357 on the Pollachi – Coimbatore Road from north to south near Othakal mandapam, the second respondent herein had driven his car bearing registration No. TN63 V0298 from the opposite side in a rash and negligent manner and dashed against the claimant. Therefore, he sustained injury on his right side hip, head and



C.R.P.No.3474 of 2018

neck. Thereafter, he was admitted in the Abirami Hospital, Sundarapuram and after first aid he transferred to Ganga Medical Centre and Hospital Ltd.

He was admitted as inpatient on 27.11.2007 and thereafter he was discharged on 19.12.2007. After discharge from the hospital, he was bed ridden in his house and taking treatment as outpatient. He spent Rs.6,00,000/- as medical expenses and as such claimed compensation as against the petitioner, second and third respondents herein.

3. On receipt of the notice, the petitioner and the second respondent failed to appear before the claim Tribunal and they were set exparte. The third respondent herein filed counter and resisted the claim on the ground that no FIR has been registered for the accident. While pending the claim petition, the original claimant died and the first respondent has been impleaded as his legal heir.

4. On the side of the claimant, he had examined P.W.1 & P.W.2 and also marked documents in Ex.P.1 to Ex.P.8. On the side of the petitioner and the respondents 2 & 3, no one was examined and no



C.R.P.No.3474 of 2018

documents were marked. On a perusal of oral and documentary evidences, the Tribunal awarded a sum of Rs.3,69,000/- as compensation payable by the petitioner and the second respondent herein jointly and severally, since the vehicle was not insured with the third respondent.

5. On the strength of the award, the claimant filed an execution petition in E.P.No.65 of 2014. On receipt of the notice from the execution Court, the petitioner came to understand about the award passed in the claim petition and filed petition to set aside the exparte decree along with delay petition to condone the delay of 1964 days in filing the petition to set aside exparte decree. The Court below rejected the said petition as not maintainable and aggrieved by the same the petitioner filed this present Civil Revision Petition.

6. The learned counsel appearing for the petitioner submitted that it is unfortunate to state that the Tribunal awarded compensation for the case of injury without even verifying any of the documents such as registration certificate of the vehicles involved in the accident, insurance



C.R.P.No.3474 of 2018

policy, driving license of the claimant as well as the driver of the offending vehicle and also the FIR. It is seen from the records, the claimant had marked documents as Ex.P.1 to Ex.P.8 viz., Ex.P.1 is the certificate issued by the Police Station for non-registration of any FIR. Ex.P.2 is the report submitted to the District Superintendent of Police from the Police Station. Ex.P.3 & Ex.P.4 are the acknowledge cards. Ex.P.5 & Ex.P.6 are medical documents Ex.P.7 is the legal heir certificate and Ex.P.8 is the death certificate.

6.1. He further submitted that the specific case of the petitioner is that the vehicle involved in the accident viz., Scorpio car insured with the United India Insurance Company, Karaikudi for the period from 24.05.2007 to 23.05.2008 under the policy No.090701/31/07/01/00000506. That apart, the vehicle owned by the petitioner's wife viz., Padmini. Whereas the claimant filed claim petition as against the petitioner, who is being husband of the owner and driver of the vehicle viz., the second respondent herein and the third respondent M/s. Royal Sundaram Alliance Insurance Company Limited, who is no way connected with the insurance to whom the vehicle was insured. Hence, he prayed to allow this present petition.



C.R.P.No.3474 of 2018

7. Heard Ms.AL.Ganthimathi, learned counsel appearing for the petitioner. Though notice served to the respondents, no one is appearing on behalf of the respondents, either in person or through pleader.

8. Admittedly the claimant did not produce any driving license of his own or the driver of the offending vehicle viz., the second respondent herein. No insurance policy was also produced before the Tribunal and no registration certificate was produced before the Tribunal in order to prove the claim. Only on receipt of the notice from the execution Court, the petitioner came to understand about the awards and therefore, he filed petition to set aside the exparte order with the delay of 1964 days. While pending this Civil Revision Petition, the petitioner also filed petition in C.M.P.No.9533 of 2021 to implead the original owner of the vehicle and also the insurance company of the vehicle.

9. On a perusal of the insurance policy revealed that the vehicle bearing registration No. TN-63-V-0298 was insured with the United India Insurance Company, Karaikudi. On a perusal of registration certificate of



C.R.P.No.3474 of 2018

the above said vehicle also revealed that one Padmini is the owner of the vehicle and the petitioner is her husband. It is also curious to note that for the said accident, no complaint was lodged and no FIR has been registered by the Police Officers. On a perusal of claim petition revealed that according to the claimant he was sustained injury on his right hip, head and neck. However, no complaint was lodged by him.

10. In fact originally, the claimant was admitted to Abirami Hospital, Sundarapuram, where no accident register was recorded and no intimation was given to the concerned jurisdiction police station. Without even perusing these basic requirements in order to award compensation, the claim Tribunal mechanically passed award as if the offending vehicle viz., TN-63-V-0298 owned by the petitioner herein and only because of the rash and negligent driving of the second respondent herein, the accident was occurred in which, the claimant sustained grievous injury.

11. Further, the claimant failed to produce any of the document to show that on 24.11.2007 at about 8.30 pm., the accident had occurred and



C.R.P.No.3474 of 2018

he sustained grievous injury due to the said accident. Therefore, the claim itself false one and the Tribunal ought not to have awarded any compensation payable by the petitioner herein. Further, the Tribunal rejected the petition to condone the delay in filing the petition to set aside the exparte decree without even numbering the same, only for the reason that the execution petition has been filed and it is pending. Therefore, the award passed by the Court below cannot be sustained and this Court has no hesitation to exercise its power under Article 227 of the Constitution of India to interfere with the award passed by the claim Tribunal.

12. In view of the above discussion, the award dated 04.03.2013 passed by the learned Subordinate Judge, Motor Accident Claim Tribunal, Pollachi, in M.C.O.P.No.263 of 2008, is hereby set aside. The claim Tribunal viz., learned Subordinate Judge, Motor Accident Claim Tribunal, Pollachi, is directed to order refund of amount already deposited by the petitioner along with interest accrued, if any, to the petitioner without seeking any application for permission. In view of the order passed in the main Civil Revision Petition, the proposed respondents are unnecessary



C.R.P.No.3474 of 2018

parties and they need not to implead in this Civil Revision Petition. Hence, the Civil Miscellaneous Petition in C.M.P.No.9533 of 2021 stands dismissed.

13. With the above directions, the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

02.02.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The Subordinate Judge,
Motor Accident Claim Tribunal
cum Sub Court, Pollachi.



WEB COPY



C.R.P.No.3474 of 2018

G.K.ILANTHIRAIYAN, J.

rts

C.R.P.No.3474 of 2018 and
C.M.P.Nos.19449 of 2018
& 9533 of 2021

02.02.2023