



C.R.P.(MD).No.1779 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(NPD)(MD)No.1779 of 2018

and

C.M.P(MD) No.7784 of 2018

Subramani ... Petitioner/Petitioner/1st Respondent

-vs-

1. Varadharaja Perumal ... 1st Respondent/1st Respondent/
Claimant

2. New India Assurance Company Ltd.,
Represented by its Branch Manager,
No.3, Main Road, First Floor,
Dindigul – 624 001 ... 2nd Respondent/2nd Respondent/
2nd Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 28.04.2018 passed in I.A.No.1746 of 2017 in M.C.O.P.No.311 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Dindigul, insofar as imposing onerous condition to the petitioner to deposit the entire award amount is concerned.

For Petitioner : Mr.N.Rahamadullah
For Respondents : Mr.R.Murali – for R2
: No appearance – for R1



C.R.P.(MD).No.1779 of 2018

ORDER

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The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the fair and decreetal order dated 28.04.2018 passed in I.A.No.1746 of 2017 in M.C.O.P.No.311 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Dindigul, insofar as imposing onerous condition to the petitioner to deposit the entire award amount is concerned.

2. The learned counsel appearing for the petitioner would submit that in M.C.O.P.No.311 of 2013, an award was passed against him, on 17.10.2016. wherein, the Court below has directed the Insurance Company, viz., second respondent herein to pay the said amount to the claimant and ordered to recover from the petitioner herein.

3. The brief facts which give rise to the present Civil Revision Petition is, a Tractor bearing Registration No.TN 67 AD 3080 was driven by the petitioner herein allegedly without license and that, since he has not appeared before the Court below, an *ex-parte* award was passed against him by setting him *ex-parte*. When the petitioner filed an application to condone the delay,



C.R.P.(MD).No.1779 of 2018

the same was allowed with the condition to pay a sum of Rs.10,87,700/- (Rupees Ten Lakhs Eighty Seven Thousand and Seven Hundred only).

Aggrieved with the said order, the petitioner has preferred this Civil Revision Petition.

4. The learned counsel for the petitioner would submit that he has a license to drive the Tractor. He would further submit that the *ex parte* award needs to be set aside to prove his case. However, there was a delay of 388 days in filing the connected application to set aside the *ex-parte* award. He would further submit that the condition imposed by the Court below is onerous. Hence prayed to modify the condition.

5. Per contra, the learned counsel appearing for the second respondent/ Insurance Company strongly objects the said contention and would submit that the award of the Court below dated 17.10.2016 is an award on merits, and that they have already paid the award amount, and that the claimant has also already withdrawn the award amount. Therefore, he would submit that unless the condition imposed by the Court below is complied with, there is no justification in allowing this Civil Revision Petition.



C.R.P.(MD).No.1779 of 2018

WEB COPY

6. This Court has given anxious consideration to the submissions of the learned counsel for the petitioner and the learned counsel for the second respondent. No one appeared on behalf of the claimant/first respondent.

7. Admittedly, there is a delay of 388 days and that the award in M.C.O.P.No.311 of 2013 was passed by the Court below on merits. However, the petitioner herein did not appear before the Court below and an *ex parte* award was passed as against him. The Court below has found justification in allowing the Section 5 of Limitation Act application with a condition. Against the order of allowing the application, the Insurance Company did not prefer any Civil Revision Petition. However, on the ground of onerous condition of payment of Rs.10,87,700/- (Rupees Ten Lakhs Eighty Seven Thousand and Seven Hundred only), the petitioner herein is before this Court.

8. Now the point for consideration is, whether the onerous condition directing the petitioner to pay a sum of Rs.10,87,700/- (Rupees Ten Lakhs Eighty Seven Thousand and Seven Hundred only) needs to be modified. Here, the Court below found sufficient cause to condone the delay. However, considering the fact of payment of award amount by the Insurance Company



C.R.P.(MD).No.1779 of 2018

and consequential withdrawal of the amount by the claimant, the Court below directed the petitioner herein to deposit the entire award amount as a condition to condone the delay.

9. As a matter of fact, this petitioner has no grievance about the finding of the Tribunal towards rash and negligence and quantum of the award in the main M.C.O.P. But they have grievance only in the order of pay and recovery as he was having driving license at the relevant point of time. It is pertinent to mention here that, apart from the above ground there are no special reasons for the Court below to impose this condition. Now that, the petitioner has no objection towards quantum of the award and the finding towards rash and negligence. As such this Court makes it clear that, this Court is not inclined to condone the delay as against the first respondent qua claimant and this Court considers this petition only against the second respondent/Insurance Company.

10. Here, when the Court below found the sufficient cause to condone the delay, directing the petitioner to pay a sum of Rs.10,87,700/- (Rupees Ten Lakhs Eighty Seven Thousand and Seven Hundred only) appears to be onerous. Therefore, this Court is inclined to interfere with the said condition.



C.R.P.(MD).No.1779 of 2018

WEB COPY

It is made clear that though this Court is inclined to interfere in respect of the quantum of cost, the award in the main M.C.O.P.No.311 of 2013 against the claimant is confirmed and that the application under Section 5 of the Limitation Act is partly allowed only as against the second respondent. In as much as the first respondent/claimant is concerned, the delay condonation application is dismissed.

11. In the result, this Civil Revision Petition is **disposed of** as indicated above, by modifying the cost from a sum of Rs.10,87,700/- (Rupees Ten Lakhs Eighty Seven Thousand and Seven Hundred only) to Rs.25,000/- (Rupees Twenty Five Thousand only). The petitioner is directed to deposit the said amount within a period of four weeks from the date of receipt of a copy of this order, failing which, this Civil Revision Petition stands dismissed without any further reference to this Court. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

12. Considering the entire gamut of the issue, the Court below is directed to dispose of M.C.O.P.No.311 of 2013 as against the second respondent/Insurance Company only, within a period of three months, subject



C.R.P.(MD).No.1779 of 2018

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to the order passed in the application for setting aside the *ex-parte* award against the Insurance Company.

04.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

Note: Issue order copy on 07.09.2023

To

1. The Motor Accident Claims Tribunal,
Special Sub Judge,
Dindigul,



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C.R.P.(MD).No.1779 of 2018

C.KUMARAPPAN,J.

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C.R.P(NPD)(MD)No.1779 of 2018

04.09.2023