



C.R.P.(MD) No.2164 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B. BALAJI

C.R.P.(MD) No.2164 of 2019
and
C.M.P(MD) No.11363 of 2019

Reliance General Insurance Company Limited,
Door No.55, First Floor,
Sri Meenakshi Plaza,
80 Feet Road,
Anna Nagar, Madurai

... Petitioner

Vs.

1.M.Chinniaya

2.K.Meyyan Ayyanar

... Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, to set aside the order passed in Lok Adalat Case No.131 of 2017 in M.C.O.P.No.24 of 2015 on the file of the learned Subordinate Judge, Tuticorin, dated 08.04.2017.

For Petitioner : Mr.V.Sakthivel

For R1 : Mr.C.Suresh Kannan

For R2 : No appearance



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ORDER

The insurance company is the revision petitioner. The Lok Adalat passed an award in Lok Adalat Case No.131 of 2017, dated 08.04.2017, which is challenged on the ground that the revision petitioner had never issued a policy to the second respondent for the vehicle bearing Registration No.TN-69-AX-2458. Pursuant to the Award agreeing to compensate the claimant at the Lok Adalat hearing, on verification, the revision petitioner appears to have discovered the fact that the said insurance policy, when checked online revealed that it pertains to a different vehicle altogether and registered for the different owner. Therefore, for the mistake of fact, the Lok Adalat Award is sought to be recalled.

2. Mr.V.Sakthivel, learned counsel for the revision petitioner would state that the issue having been brought to the notice of the Insurance Company and on the date of the accident, there being no policy issued by the revision petitioner, the revision petitioner cannot be mulcted with the liability to pay the compensation amount. Therefore, the



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Lok Adalat Award, which was passed based upon the mistake, should be recalled. He would also place reliance on the decision of this Court in CRP(MD)No.8081 of 2010, dated 14.06.2010, wherein, in similar circumstances, this Court set aside the Lok Adalat Award and restored the MCOP proceedings to file, with a direction to dispose of the same expeditiously.

3.Per contra, Mr.C.Suresh Kannan, learned counsel for the claimant/first respondent would submit that the claimant cannot be faulted for the mistake of the revision petitioner and they had consciously participated before the Lok Adalat and they have also signed in the impugned Award. He would therefore state that the revision petition has to be dismissed.

4. I have considered the respective submissions made on either side.

5. The contract of insurance should be enforceable against the revision petitioner. Under the mistake of fact, the revision petitioner



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appears to have conceded to an award being passed in the Lok Adalat.

Therefore, I am of the view that an opportunity should be given to the revision petitioner to establish the said case of mistake of fact viz., the issue whether there was a valid insurance policy held by the second respondent. Necessarily, it follows that in the event of the Tribunal finding that the claim of the revision petitioner is incorrect, then the Insurance Company would be bound to pay the amount to the claimant. It is also noted that the owner of the vehicle namely, the second respondent remained *ex parte* and he did not choose to appear even before the Lok Adalat and he does not appear before this Court also. However, in the interest of justice, I am of the view that a reasonable amount is to be deposited by the revision petitioner before the MCOP proceedings subject to the result of the final order to be passed in M.C.O.P.No.24 of 2015. Hence, this Civil Revision Petition is allowed with following directions:-

(i) The award passed in Lok Adalat Case No.131 of 2017 in M.C.O.P.No.24 of 2015, dated 08.04.2017, is hereby set aside.

(ii) The revision petitioner shall deposit a sum of



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Rs.5,00,000/- before the Tribunal in the account of M.C.O.P.NO.24 of 2015 on the file of the Sub Court, Tuticorin within a period of four weeks. The payment of compensation is subject to the result of any award to be passed by the Tribunal and any petition seeking payment out at the instance of the claimant, shall not be entertained till the final decision is passed.

(iii) The Tribunal shall order fresh notice to the second respondent herein, i.e., first respondent before the Tribunal as his liability is also being dragged into the issue in view of the revision petitioner claiming that they are not liable to pay the compensation amount.

(iv) The Tribunal shall dispose of M.C.O.P.No.24 of 2015 within a period of three months from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petition is closed.

03.11.2023

NCC : Yes/No



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Index : Yes/No
Internet : Yes



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P.B. BALAJI, J.

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Note: Issue order copy on 08.11.2023

To
The Subordinate Judge,
Tuticorin.

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Dated: 03.11.2023