IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.06.2024

THE HONOURABLE **MR.JUSTICE BATTU DEVANAND**

C.R.P. No.3297 of 2019
and CMP.No.21417 of 2019

Mrs.Parveen ... Petitioner

Vs.

V.A.Mohammed Ghouse (died)
1. Reliance General Insurance Company Ltd.,
   Motor Third Party Claims Department,
   No.6, Fourth Floor, Reliance House,
   Haddows Road, Nungambakkam,
   Chennai 600 006.
2. K.Shanmugham
3. R.Jeevarathinam
4. M/s.Nokia India Pvt. Ltd.,
   Sipcot Industrial Park Phase III,
   No.4, Sriperumbudur,
   Kancheepuram 602106.
5. R.Vijayakumar
6. New India Assurance Co. Ltd.,
   Garden Apartments, First Floor,
   No.68, Purasawalkam High Road,
   Chennai 600007.
7. M/s.Parveen Travels Pvt. Ltd.,
   No.115/06, Santha Vellore Village,
   S.V.Chattiram,
   Sriperumbudur. ... respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed by the Motor Accidents Claim Tribunal (Special Sub-Court-I, Motor Accidents Claim Petitions), Small Causes Court, Chennai in MP.No.1184 of 2018, dated 24.06.2019 in MCOP.No.3076 of 2008.

For Petitioner	: Mr.T.N.Sugesh
For Respondents	
for R1	: Mr.P.Suresh Srinivasan
for R2	: Mr.S.Arunkumar
for R6	: Mr.S.Chandran

ORDER

This CRP is filed against the order dated 24.06.2019 in MP.No.1184 of 2018 in MCOP No.3076 of 2008 on the file of the Motor Accidents Claims Tribunal, Special Sub Court-I, Court of Small Causes, Chennai.

2. The petitioner herein is the second petitioner and the first respondent herein is the third respondent in MCOP.No.3076 of 2008. The respondent Nos.2 to 7 are the respondents in the said MCOP. The parties as arrayed in MCOP will be referred hereinafter for the convenience.

3. The brief facts of the case are that the son of the petitioner i.e., V.M.Farook Ahamed died on 28.12.2007 due to the injures caused in an accident that occurred on 19.12.2007, and therefore the petitioner claimed compensation by filing a claim petition in MCOP.No.3076 of 2008 on the file of the Motor Accident Claims Tribunal, Chennai. The respondent Nos.1 to 5 and the seventh respondent were set exparte on 05.01.2009 and 07.10.2014, respectively. The sixth respondent had only contested the claim petition. After considering the oral and documentary evidence, the Claims Tribunal by its order and decree dated 1st November 2016 allowed the claim petition awarding compensation for a sum of Rs.21,21,056/- with costs and interest at 7.5% per annum from the date of numbering of the claim petition i.e., 05.09.2008 till realisation, payable by the third and sixth respondents equally. The third respondent and sixth respondents are directed to deposit the said amount to the credit of the Bank Account of the Claims Tribunal directly by NEFT or RTGS within a period of two months from the date of receipt of a copy of that order. The Tribunal also passed order for apportionment of the award amount to the petitioner. The sixth respondent has deposited 50% of their share of award of compensation before the Tribunal.

4. Subsequently, the first respondent herein/third respondent in MCOP filed MP.No.1184 of 2018 before the Claims Tribunal under Order 9 Rule 13 CPC to set aside the order and decree dated 01.11.2016 passed in MCOP.No.3076 of 2008. The Claims Tribunal allowed the said petition by its oder dated 24th June 2019. Against the said order, the present Civil Revision Petition has been filed by the second claimant.

5. The learned counsel for the petitioner/second claimant submits that the order dated 24.06.2019 in MCOP.No.3076 of 2008 passed by the Motor Accident Claims Tribunal is contrary to law, weight of evidence, and the probabilities of the case and is thus liable to be set aside.

6. The learned counsel contends that the Tribunal failed to appreciate that the order dated 01.11.2016 in MCOP.No.3076 of 2008 was passed on merits and that the another Insurance Company, viz., New India Assurance Co. Ltd., had duly contested the matter, let in evidence and thereafter only order was passed on merits in MCOP and as such, the petition filed by the first respondent herein to set aside the exparte order is not at all maintainable.

7. The learned counsel further contends that as per the averments of affidavit filed by the first respondent herein/third respondent, notice had been duly issued to the said respondent in MCOP and they had also received it as early as on 19.11.2018, whereby the date of hearing was on 05.01.2009, which was duly intimated to them. Therefore, the petition filed by the third respondent after a lapse of more than 9 years was not maintainable and is liable to be set aside.

8. The learned counsel also submits that after passing order dated 01.11.2016 in MCOP, one of the respondents therein, namely, New India Assurance company Ltd. has also complied with the said order and already paid the compensation amount as awarded by the Tribunal.

9. Finally, the learned counsel submits that as and when the final order dated 01.11.2016 in MCOP has been partially complied with by one of the Insurance Companies, the present petition seeking to set aside the final order was not maintainable at this stage and sought to set aside the order dated 24.06.2019 in MP.No.1184 of 2018 in MCOP.No.3076 of 2008 by allowing the present Civil Revision Petition.

10. The learned counsel for the sixth respondent submits that in compliance of the order dated 01.11.2016 in the Claim Petition, wherein the Tribunal has awarded compensation to the claimants and fastened liability equally on both the Insurance Companies, the New India Assurance Co. Ltd., had deposited 50% of the award amount in the Claims Tribunal.

11. The learned counsel further submits that the reason stated seeking to set aside the order and decree passed in MCOP.No.3076 of 2008 is unsustainable under law and only with a view to protract the proceedings unnecessarily the first respondent herein/third respondent filed MP.No.1184 of 2018 before the Tribunal.

12. The petition filed by the the first respondent herein/third respondent after prolonged delay is not sustainable in both law and facts and it is liable to be dismissed. But the Tribunal erroneously allowed the said petition, which will cause irreparable damage to the claimants.

13. The learned counsel for the first respondent herein/third respondent submits that notice had been issued to the third respondent for

the hearing on 05.01.2009 and the same was received by them on 19.11.2008. The same was mixed with other claim papers and as such there was no representation on behalf of the third respondent before the Tribunal. Hence, the Tribunal passed the order that the respondent Nos.1 to 5 have been set ex-parte on 05.01.2009. This came to their knowledge after receiving notice in E.P.No.868 of 2017 and thereafter they entered appearance on 22.01.2018. As per the learned counsel for the third respondent there is neither wilful nor wanton delay in filing the restoration petition.

14. The learned counsel for the third respondent further submits that the petition filed to condone the delay of 490 days in filing the set aside exparte decree was allowed on payment of costs of Rs.15,000/- by order dated 11.12.2018 and thereafter, in the interest of justice to give one more opportunity to the third respondent to contest the case on merits, the Tribunal allowed the petition filed by the third respondent and as such, the interference of this Court is not warranted against the order dated 24.06.2019 passed by the Tribunal in MP.No.1184 of 2018 and sought to dismiss the Civil Revision Petition.

15. Having heard the respective counsels and on careful perusal of entire materials available on record, it appears that there is no dispute with regard to the admitted facts of the case. The claim petition was filed in the year 2008. Notice had been issued to the respondents therein informing the date of hearing as 05.01.2009. The said notice was received by the third respondent, i.e., Reliance General Insurance Co. Ltd., on 19.11.2008 and as there was no appearance on behalf of the third respondent, the Claims Tribunal passed an order dated 05.01.2009 setting them exparte. Thereafter, the Tribunal passed decree and order on 01.11.2016 in the claim petition. Subsequently, the claimants initiated execution proceedings in EP.No.868 of 2017. In the said execution proceedings, the third respondent received notice from the Execution Court and then they entered appearance on 22.01.2018. Thereafter, they come up with the petition to set aside the exparte decree dated 01.11.2016 along with the petition to condone the delay in filing to set aside the exparte decree.

16. The petition filed for condonation of delay of 490 days in filing to set aside exparte decree was allowed on 11.12.2018 on payment of costs. Subsequently, by order dated 24.06.2019, the Claims Tribunal allowed the

petition by setting aside the exparte decree. The reasons stated by the Tribunal for allowing the petition is that no appeal was filed against the order in condoning the delay of 490 days in filing the petition to set aside exparte decree and in the interest of justice to give one more opportunity to the third respondent to contest the case on merits.

17. On perusal of the reasons stated by the Claims Tribunal in its order dated 24.06.2019, wherein the petition filed to set aside the exparte decree was allowed, it appears that the Claims Tribunal utterly failed to consider the facts of the case in proper perspective. Admittedly, the third respondent was set exparte on 05.01.2009. Even after receiving notice on 19.11.2008 in the claim petition, they did not choose to file any application to set aside the exparte order dated 05.01.2009 and only after receipt of the notice in EP.No.868 of 2017, they came up with the petition to set aside the exparte decree and order dated 01.11.2016.

18. The Tribunal also failed to consider the fact that the claim petition was fully contested by the sixth respondent therein, viz., New India Assurance Co. Ltd., and witness were examined and documents were

marked and after pursuing all the documents, and evidence and after hearing the arguments of both sides, the Claims Tribunal has passed the order by awarding compensation by its order dated 01.11.2016. The Claims Tribunal also failed to consider that it is a fully contested case and mere absence of the third respondent will not cause prejudice to them. The Claims Tribunal ought to have considered that.

19. The son of the petitioner died in the year 2007 and the claim petition was filed seeking compensation in the year 2008 and compensation was awarded in the year 2016. But in view of the fact that the third respondent's failure to participate in the proceedings of the claim petition in the Claims Tribunal and filing of MP.No.1184 of 2018 to set aside the exparte order and interim stay granted by this Court on 04.10.2019, till date even after 17 years from the date of death of their son, even after 8 years after awarding compensation by the Tribunal, the claimants are not in a position to get the compensation. The third respondent being involved in the General Insurance Business has to take care of the Court cases particularly, with regard to claim petitions in the accident case. The first respondent herein/third respondent Insurance Company being a trustee of the public

money have to show due diligence towards the legal proceedings. For failure of the Insurance Company to participate in the claim proceedings in spite of service of notice, the Courts need not show lenient view towards them. It will seriously affect the interest of poor claimants. In the present case, already as stated above one of the respondent i.e., New India Assurance Co. Ltd. participated in the claim proceedings before the Claims Tribunal and let in their evidence and contested the matter and the said Insurance Company has also complied with the order of the Tribunal by depositing 50% of their share. However, the Tribunal utterly failed to consider the fact that once the order of the Tribunal has been complied with by one of the party to the proceedings, allowing another party to contest the case, which was allowed already by well reasoned order is illegal and arbitrary and against the settled principles of law.

20. For the reasons stated above, in the considered opinion of this Court, the order dated 24.06.2019 in MP.No.1184 of 2018 in MCOP No.3076 of 2008 on the file of the Motor Accidents Claims Tribunal, Special Sub Court-I, Court of Small Causes, Chennai, is unsustainable in law and accordingly, it is hereby set aside.

21. In the result, the present Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

24.06.2024

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Index : Yes / No
Internet : Yes / No

To
The Motor Accidents Claim Tribunal,
Special Sub-Court-I, Small Causes Court, Chennai

BATTU DEVANAND, J.

pvs

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