



C.M.A(MD)No.469 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 01.04.2024

CORAM

THE HONOURABLE MRS.JUSTICE **G. ILANGO VAN**

C.M.A(MD)No.469 of 2021

1.Sukantha Bhoi
2.Anushya Bhoi

... Appellants / Petitioners

Vs

1.The Managing Director,
M/s.Sidhanth Transport, Pepsi Co,
"Jenne Plaza"
No.5, Bharathiyar Salai,
Trichy District.

2.The Branch Manager,
M/s. United India Insurance Co. Ltd.,
23E, E.V.R.Road, Puthur,
Trichy.

...Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Order 43 Rule 3 and Under Section 104 of CPC, to set aside the fair and decreetal order passed in I.A.No.541 of 2018 in M.C.O.P.No.138 of 2015 dated 24.08.2018 on the file of the learned Principal District Judge, Tiruchirapalli.



C.M.A(MD)No.469 of 2021

For Appellants : Mr.B.Saravanan
For R1 : No appearance
For R2 : Mr.I.Suthakaran

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the fair and decretal order passed in I.A.No.541 of 2018 in M.C.O.P.No.138 of 2015 dated 24.08.2018 by the learned Principal District Judge, Tiruchirapalli.

2. The facts in brief is that claiming compensation for the death of his son in a motor accident that took place on 12.04.2012, the petitioner filed M.C.O.P.No.138 of 2015 before the Tribunal. Due to their non-appearance, that was dismissed for default on 20.06.2018. To set aside the dismissal order, petitioners filed I.A.No.541 of 2018, that came to be dismissed by the Tribunal by the impugned order dated 24.08.2018, against which, this Civil Miscellaneous Appeal is filed.

3. The reason for the non-appearance is stated to be that the first petitioner herein was affected by Chikungunya and he could not contact his advocate. The respondent namely the Insurance Company and the owner of



C.M.A(MD)No.469 of 2021

the offending vehicle remained *ex parte* in that petition also. But however, the Tribunal found that it is a second application for restoration. For the first time, it was dismissed on 04.02.2017 for their non appearance. With a delay of 340 days, another application was filed to restore the petition. So it was restored on 05.06.2018, as per the order passed in I.A.No.317 of 2018 dated 04.06.2018. Against the second default committed by the appellant. Considering the oldness of the matter, it was dismissed.

4. No doubt, that there was an inordinate delay in prosecuting the matter by the appellants. But the fact remains that the main petition was filed for compensation for the death of their son. If at all, the interest period for the default can be waived and this is the usual orders to be passed in such matters. Simply because they remained absent for the second time, the Tribunal ought not to have dismissed the petition, but the Tribunal could have imposed certain conditions. If the main petition is not restored to file, then the appellants may lose the compensation amount. The inconvenience that has been caused to the respondents can be compensated by waiving of the interest for the default period. But if the claim of the appellants, is dismissed as mentioned above, they may lose the substantial monetary benefits. On the



C.M.A(MD)No.469 of 2021

sole ground, the appeal is allowed on condition that the appellant is not entitled for any interest for the default period, if the award is passed.

5. With the above said observation, this Civil Miscellaneous Appeal is allowed and the order passed in I.A.No.541 of 2018 in M.C.O.P.No.138 of 2015 dated 24.08.2018 by the learned Principal District Judge, Tiruchirapalli, is set aside and M.C.O.P.No.138 of 2015, is restored to the file of learned Principal District Judge, Tiruchirapalli, on condition that the appellants are not entitled for any interest for the default period.

01.04.2024

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

pnn

To

- 1.The Employees Compensation Commissioner of Court, Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

4 / 5



WEB COPY



C.M.A(MD)No.469 of 2021

G. ILANGO VAN, J

pnn

C.M.A(MD)No.469 of 2021

01.04.2024