BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2024

CORAM:

THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

C.R.P(NPD)(MD)No.756 of 2022

Senior Manager
M/s Iffco Tokio General Insurance Company Limited,
82, Preetham Plaza First Floor,
Chandragandhi Nagar,
Ponmeni, Bye-pass Road,
Madurai. ... Revision Petitioner

vs.

1.Muthu Muniyandi
2.Selvarani
3.Harishankar ... Respondents/Respondents

Prayer:- Civil Revision Petitions filed under Section 115 of C.P.C., to set aside the fair and executable order passed in I.A.No.293 of 2019 in I.A.No.521 of 2014 in MCOP No.1841 of 2010 dated 11.11.2021 on the file of the I Additional District Judge, Madurai.

For Petitioner : Mr.V.Sakthivel

For Respondents : No Appearance for R1 & R2

Mr.M.Jothibasu for R3

ORDER

The Civil Revision Petition is filed to set aside the order dated 11.11.2021 made in I.A.No.293 of 2019 in I.A.No.521 of 2014 in MCOP No.1841 of 2010.

2.The above claim petition is filed arising out of a fatal accident, dated 23.05.2010. Originally, an *ex parte* award was passed on 26.03.2012, awarding a sum of Rs.1,50,000/- along with further interest at the rate of 7.5% p.a., from the date of petition till the date of realization and costs. Thereafter, the petitioner/Insurance company filed I.A.No.251 of 2014 to set aside the *ex parte* award along with a delay of 351 days. The said application in I.A.No.251 of 2014 was allowed and thereafter, when the main application to set aside the *ex parte* award in I.A.No.521 of 2014 came up for hearing, the same was dismissed for default on the ground that notice was not served on the other side. Thereafter the present application is filed to restore the said application in which also there is a delay of 1624 days in filing the restoring application. The said application is dismissed. Aggrieved by which, the present Civil Revision Petition is filed.

3.The learned counsel appearing on behalf of the petitioner would submit that earlier this Court had directed the petitioner/Insurance company to show its *bonafide* by depositing the award amount and accordingly, the award amount of Rs.1,50,000/- is deposited by way of fixed deposit. He would further submit that this is a case where the insurance policy itself is not produced before the trial Court. To the best of the efforts of the petitioner/Insurance company it is unable to trace out any insurance policy which is standing in the name of the offending vehicle. Even without an insurance policy number being mentioned in the petition or marked in the trial even in the *ex parte* stage, the trial Court has passed the award and therefore, in view of the extraordinary circumstances and opportunity should be granted to the petitioner/Insurance company.

4.I have considered the said submissions made by the learned counsel for the petitioner and perused the material records of the case.

5.Firstly, it can be seen that by an order dated 18.06.2024, this Court had directed the petitioner/Insurance company to invest the entire amount with interest in terms of the award dated 18.10.2010 and therefore, the Insurance company depositing the amount of Rs. 1,50,000/- alone will not amount to compliance of the earlier directions as the interest portion is not deposited. Be that as it may, it can be seen from the supporting affidavit filed by the learned counsel appearing on behalf of the Insurance company in the interlocutory applications that it is not by way of any carelessness or willful omission. The notice was not served, but the reasons are explained in the affidavit in delay.

6.On perusal of the said affidavit, this Court also finds that the reasons which are mentioned in the supporting affidavit are *bonafide* and there is no fault on the part of the learned counsel for the petitioner/Insurance company or even the petitioner/Insurance company as such. In the normal course, this Court would have set aside the order and remitted the matter back to the trial Court. But however, it can be seen that the accident is of the year 2010. The MCOP is of the year 2010. The award was passed in the year 2012. The amount of award is only Rs.1,50,000/- with further interest at the rate of 7.5% per annum. The award relates to the fatal accident. The deceased was a tender child of one year of age. Only the father and mother are the petitioners/claimants. Therefore, it can also be seen that at the time of the *ex parte* enquiry in the year 2012, the insurance policy is not produced. Now the parents, who have lost their child, are compelled to trace out the insurance policy at this belated point of 12 years, ie., in the year 2024, then the same would cause grave prejudice to the said petitioner. Even if the Insurance company is not at all fault, if the delay has occurred on their non-prosecuting the MCOP swiftly and the delay has now crossed 12 years, the delay by itself would defeat the purpose of the trial as the said poor claimants will not be now in a position to trace out the policy and produce before the Court. Therefore, when the delay is such that it is disentitles one party to muster such evidence in their support to prove their claim in the trial at the belated point of time re-trial should not be ordered. Further, it can be seen that a less amount of Rs.1,50,000/- alone is awarded by the trial Court.

7.Considering the over all facts and circumstance of the case, this Court is of the opinion that the order passed by the trial Court dismissing the application filed by the petitioner/Insurance company need not be set aside and the Civil Revision Petition stands dismissed. No costs.

11.07.2024

NCC : Yes / No
sji

To

The I Additional District Judge, Madurai.

D.BHARATHA CHAKRAVARTHY, J.

sji

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