BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.07.2024

CORAM

THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.1478 of 2022
and
C.M.P(MD).No.6175 of 2022

Adwin ... Petitioner

Vs.

1.Reliance General Insurance Co Ltd.,
Rep., by its Branch Manager,
Office at 33, Bethesda Complex,
WCC Road, Nagercoil,
Office adrress at, 173, 2nd Cross,
10th Cross, Thillai Nagar East,
Trichy-18.

2.Prabin

3.The Branch Manager,
Tamil Nadu State Transport Corporation Ltd.,
Kanniyakumari. ... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the order passed by the learned I Additional District Judge, Tirunelveli in I.A.No.I of 2021 in M.C.O.P.No.1508 of 2017 vide his order dated 02.03.2022 and set aside the same.

For Petitioner	: Mr.P.Samuel Gunasingh
For Respondents	: Mr.S.Michael Heldon Kumar (for R3)
	Mr.V.Sakthivel (For R1)
	No representation (for R2)

ORDER

This civil revision petition is filed aggrieved by the order passed by the learned I Additional District Judge, Tirunelveli / MACT in I.A.No.1 of 2021 in M.C.O.P.No.1508 of 2017. By the said order, the Tribunal set aside the *ex-parte* award and posted the matter further for enquiry so as to enable the first respondent herein Insurance Company to participate in the proceedings.

2. The MCOP is filed on an injury claim. It is the claim of the petitioner that he along with his friend was travelling in a two wheeler. On account of the rash and negligent driving of his rider and on account of the fact that the back wheel tire got ruptured suddenly, the bike lost control and dashed against the bus of the Tamil Nadu State Transport Corporation. The petitioner sustained grievous injuries. MCOP was filed arraying the owner of the two wheeler as the first respondent, the Insurance Company as the second respondent and the Tamil Nadu State Transport Corporation as the third respondent. Even though notice was sought to be served, the second respondent Insurance Company refused notice and as such, the service was treated as complete. Thereafter the *ex-parte* award was passed granting a sum of Rs.14,05,737/- (Rupees Fourteen Lakh Five Thousand Seven Hundred and Thirty Seven only) as compensation. The trial Court took into consideration the medical expenses, pain and suffering and permanent disability assessed by a private Doctor at 63% and awarded the above compensation. When the petitioner filed an execution petition to realize the award amount, the application for setting aside the *ex- parte* award was filed along with the application for condonation of delay of 550 days, which is now allowed by the trial Court, aggrived by which, the present Civil revision petition is filed.

3. The learned counsel for the petitioner would submit that when the notice was duly served, the second respondent /Insurance Company refused to receive the same. Therefore, the trial Court was right in setting the second respondent/ Insurance Company as *ex-parte* and even thereafter only, upon examination of the witnesses, examination of the Doctor, the matter was considered and by a detailed judgment going head-wise, the award was passed granting compensation. If the same is now set aside, the petitioner, who has suffered accident in the year 2017, would be put to grave prejudice.

4. The learned counsel appearing on behalf of the first respondent/ Insurance Company would submit that it is true that there was some error on the part of the employees of the Insurance Company to have not received the said letter. But, it can be seen that once notice was served in the execution petition, immediately the application was filed. It can be seen from the merits of the case that as per the First Information Report lodged by the driver of the bus, there were 3 persons traveling in the two wheeler and therefore, there is a possibility that the second respondent claiming the trial Court to modify the award amount as pay and recover from the owner. There is also possibility of apportionment of liability between the second respondend/ Insurance Company and the third respondent transport Corporation. When the Insurance Company has got a substantial merit in its case, no exception can be taken to the order of the trial Court in granting a one more opportunity to the Insurance Company. The delay, which is caused on account of the error on the part of the Insurance Company, can be adequately compensated even by this Court by directing deposit of 50% of the award amount, which can be permitted to be withdrawn by the claimant, so that the delay does not adversely prejudice them.

5. The learned counsel appearing on behalf of the Transport Corporation would submit that there is no way that any liability can be apportioned on the Transport Corporation driver. From the FIR itself it is very clear that only because three persons were traveling in the two wheeler and because the tyre of their two wheeler got burst, the rider lost control of the vehicle and dashed against the Corporation bus.

Absolutely, no negligence whatsoever can be attributed on the part of the third respondent Corporation or its driver. Even as per the petition filed by the petitioner, the entire negligence is imputed only on the rider of the two wheeler and not even an allegation which is made against the driver of the Corperation.

6. I have considered the rival submissions made on either side and perused the materials record of the case.

7. As far as the submissions made by the learned counsel appearing on behalf of the Corporation, the matters as it stands today, there is no pleading or evidence as against the Transport Corporation bus. That may be so, once at the instance of the second respondent the *ex-parte* award is set aside, then the same has to be decided on its own merits. Merely because the *ex-parte* award is set aside, that doesn't mean that the Court is accepting the case of the Insurance Company that the liability has to be apportioned. It will be decided by the Trial Court on merits, subject to the evidence, which may be let in during the course of the trial.

8. Adverting to the submissions made on behalf of the claimant while it is true that on the part of the error of the Insurance Company, the petitioner should not be put to prejudice, at the same time, when there is a substantial defence on merits, the Court would also lean in favour of rendering substantial justice between the parties, and therefore, this is not a case where the Insurance Company should be shut out at the outset. At the same time, the accident happened in the year 2017 and now we are in 2024, the claimant after suffering cannot be left high and dry. The learned counsel for the first respondent/ Insurance Company would submit that the 50% of the award amount will be deposited and the petitioner claimant can be permitted to withdraw the same. It is his contention that the Insurance Company would predominantly plead pay and recovery because in violation of the terms of insurance, three persons have gone in the two wheeler. In view thereof, this Court is of the opinion that the 50% of the award amount rounded up to Rs.7,50,000/- can be directed to be deposited and the same shall be permitted to be withdrawn by the claimant pending the MCOP and further reliefs will be subject to the ultimate findings of the Tribunal.

9. In view thereof, this Revision Petition stands partly allowed on the following terms:-

(i)The order made in I.A.No.1 of 2021 in M.C.O.P.No.1508 of 2017, dated 02.03.2020 is modified and I.A.No.1 of 2021 is allowed on condition that the first responded/ Insurance Company shall deposit a sum of Rs. 7,50,000/- to the credit of the M.C.O.P.No.1508 of 2017 on or before 15.08.2024;

(ii) On such deposit, the petitioner/claimant/Adwin will be entitled to withdraw the entire sum;

(ii)Once the said conditional order is complied with, the exparte award shall also stand set aside and the parties shall file their counters and the Trial Court shall take up M.C.O.P.No.1508 of 2017 for disposal on merits as expeditiously as possible and the Trial Court shall endeavor to dispose of the same within a period of six months from the date of receipt of the copy of this order.

(iii)It is brought to the notice of this Court that the permanent disability was assessed by the private doctor at the relevant point of time and disability certificate was marked and now it would be inequitable to assess the disability at the present point of time. Therefore, the very same certificate and the Doctor's evidence shall be taken on record, however, subject to further cross-examination by the learned counsel on behalf of the Insurance Company and contra evidence, if any, they want to let in;

(iv)When the final award is passed, appropriate orders can be passed by the Tribunal regarding the sum now deposited and ordered to be paid by the Insurance Company;

(v) Along with the said sum of Rs.7,50,000/-, the sum of Rs. 5,000/-already deposited as costs shall also be withdrawn by the claimant.

Consequently, connected Miscellaneous Petition is closed.

11.07.2024

NCC:Yes/No
Index:Yes/No
Rmk

To

1. I Additional District Judge, Tirunelveli.

D.BHARATHA CHAKRAVARTHY, J.

Rmk

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