



C.R.P.(PD)(MD).No.2818 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.2818 of 2018

S.Dhanalakshmi

... Petitioner/Petitioner/
Petitioner

-vs-

1. A.Meenakshi

2. M/s. United India Insurance Company Limited,
Represented by its Manager,
No.78, Kamarajar Salai,
Cauvery Nagar,
Kuzhithalai Taluk,
Karur District.

... Respondents/Respondents/
Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.01.2017 made in I.A.No.457 of 2016 in M.C.O.P.No.48 of 2014 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Karur.

For Petitioner : Mr.I.Velpradeep

For Respondents : Mr.A.Shajahan – for R2
: No appearance – for R1



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ORDER

The present Civil Revision Petition has been filed by the claimant in M.C.O.P.No.48 of 2014 on the file of Motor Accident Claim Tribunal cum Chief Judicial Magistrate, Karur.

2. When the claim petition was listed for filing of proof affidavit, the claimant had not appeared before the Court and the same was dismissed for default on 26.07.2016. The claimant had filed I.A.No.371 of 2016 for condoning the delay of 5 days in filing an application to restore the Motor Accident Claim Petition. The said application was allowed on 22.10.2016. Thereafter, an application was filed by the claimant under Order IX Rule 9 of C.P.C and was numbered as I.A.No.457 of 2016. The said application, namely I.A.No.457 of 2016 was allowed by the Tribunal on 03.01.2017 with a condition that the claimant should file the proof affidavit on or before 10.01.2017.

3. The order further pointed out that in case, the proof affidavit was not filed on 10.01.2017, I.A.No.457 of 2016 would get automatically dismissed.



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The claimant neither appeared on 10.01.2017 nor filed her proof affidavit on the said date. Therefore, I.A.457 of 2016 was dismissed.

4. Unmindful of the above said facts, the claimant had filed I.A.No.271 of 2017 for condoning the delay of 282 days in restoring the Motor Accident Claim Petition that was dismissed for default on 26.07.2016. Another application in I.A.No.318 of 2017 was filed to restore the Motor Accident Claim Petition that was dismissed for default on the said date. The trial Court dismissed these two applications on the ground that the claimant had suppressed the filing of I.A.No. 371 of 2016 and I.A.No.457 of 2016 and has again filed these two applications. The present Revision Petition has been filed, challenging the order dated 10.01.2017 made in I.A.No.457 of 2016, wherein, the trial Court had dismissed the said I.A on the ground that no proof affidavit was filed on the side of the claimant.

5. According to the learned counsel appearing for the claim petitioner/ revision petitioner, I.A.No.271 of 2017 and I.A.No.318 of 2017 ought not to have been filed. These applications were superfluous in nature. The Tribunal has already condoned the delay in filing the application to restore the Motor



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Accident Claim Petition by way of allowing I.A.No.371 of 2016. Therefore, there was no necessity for him to file I.A.No.271 of 2017. However, by mistake, such an application came to be filed and another application in I.A.No.318 of 2017 was also filed to restore the Motor Accident Claim Petition that was dismissed for default on 26.07.2016. In fact, the restoration application filed earlier in I.A.No.457 of 2016 was already allowed on condition to file proof affidavit on or before 10.01.2017. Therefore, according to the learned counsel appearing for the revision petitioner, unnecessarily I.A.No.271 of 2017 and I.A.No.318 of 2017 have been filed and had been found fault with by the Motor Accident Claims Tribunal. For the mistake committed by the counsel before the Tribunal, the claimant should not be prejudiced. Hence, he prayed for allowing the Civil Revision Petition, challenging the order dated 10.01.2017 made in I.A.No.457 of 2016.

6. Per contra, the learned counsel appearing for the second respondent/ Insurance Company had contended that the claimant had suppressed that filing of I.A.No.371 of 2016 and I.A.No.457 of 2016 and thereafter, again filed I.A.No.271 of 2017 and I.A.No.318 of 2017. Therefore, the Tribunal has rightly dismissed these two applications for suppression of material facts.



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Hence, he prayed for dismissal of the revision petition by sustaining the order passed by the trial Court. He further pointed out that the orders passed by the Tribunal in I.A.No.271 of 2017 and I.A.No.318 of 2017 have not been challenged. Therefore, the present Revision Petition, challenging the order dated 10.01.2017 in I.A.No.457 of 2016 is not maintainable.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. The Motor Accident Claim Petition in M.C.O.P.No.48 of 2014 pending on the file of the Chief Judicial Magistrate, Karur, was dismissed for default on 26.07.2016. The application to condone the delay in restoring the said claim petition was filed in I.A.No.371 of 2016 which was allowed on 22.10.2016. Another application filed in I.A.No.457 of 2016 for restoration of Motor Accident Claim Petition was also allowed on 03.01.2017, however, with a condition to file proof affidavit on the part of the claimant on or before 10.01.2017. However, the claimant had not filed her proof affidavit on 10.01.2017 and as a consequence, I.A.No.457 of 2016 got dismissed automatically. These facts are not in dispute.



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9. Without pursuing or attempting to seek extension of time in I.A.No. 457 of 2016, the claimant has chosen to file I.A.No.271 of 2017 and I.A.No. 318 of 2017 in order to condone the delay and restore the M.C.O.P that was dismissed for default on 26.07.2016. Of course, these two applications were superfluous in nature and the trial Court ought not to have entertained these applications and disposed of the same on merits. Therefore, when the delay in restoring the Motor Accident Claim Petition has already been condoned, the Tribunal was not right in finding that claimant has suppressed the material facts before the Tribunal.

10. When the Civil Revision Petition came up for hearing before this Court, this Court directed the claimant to be ready with the proof affidavit along with the required documents. Proof affidavit and the documents are placed before this Court.

11. Therefore, considering the above said facts, the order passed by the Tribunal on 10.01.2017 in I.A.No.457 of 2016 is hereby set aside and M.C.O.P.No.48 of 2014 is directed to be taken on file. The parties are directed



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to appear before the Tribunal on **25.04.2024**. On the said date, the claimant is directed to place the proof affidavit along with documents.

12. With the above said observation, this Civil Revision Petition is allowed. It is made clear that the claimant shall not be entitled to any interest for the period between 26.07.2016 till 25.04.2024. There shall be no order as to costs.

13. Post the matter for reporting compliance, on **26.04.2024**.

05.04.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Motor Accident Claims Tribunal cum



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Chief Judicial Magistrate,
Karur.

R.VIJAYAKUMAR,J.

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