



WEB COPY

C.R.P.(MD)No.1463 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)No.1463 of 2022

and

C.M.P(MD)No.6066 of 2022

The Divisional Manager,
United India Insurance Company Limited,
Neel Complex, Tenkasi. ...Petitioner/Petitioner/3rd Respondent

Vs.

Annadurai ... Respondent/Respondent/Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the Fair Order and Decreetal order, dated 23.11.2021, passed in I.A.No.2 of 2021, in M.C.O.P.No.340 of 2021, on the file of the Motor Accidents Claims Tribunal(Additional Subordinate Court), Tenkasi.

For Petitioner : Mr.I.Robert Chandrakumar

For Respondent : Mr.M.Rajaram

ORDER

The respondent Insurance Company in M.C.O.P.No.340 of 2021 on the file of the Motor Accidents Claims Tribunal/Additional Sub Court, Tenkasi, has filed the above revision petition, challenging the order passed by the Tribunal wherein the application filed by the Insurance Company for rejection of the petition under Order 7 Rule 11 was dismissed.



2.A perusal of the records reveal that the respondent herein is said to have been injured in the motor vehicle accident that happened on 28.08.2005. The respondent herein had filed M.C.O.P.No.55 of 2006, before the Additional Sub Court, Tenkasi, claiming compensation. The said claim petition was dismissed for default on 27.01.2010. Without restoring the said claim petition, a fresh claim petition was filed in M.C.O.P.No.340 of 2021, before the same Court. The respondent/Insurance Company had filed I.A.No.2 of 2021, to reject the claim petition on the ground that the second claim petition is not maintainable, when the first petition was dismissed for default. The Tribunal after considering the submissions made on either side has proceeded to dismiss the said application on the ground that the first claim petition was not disposed of on merits and being a welfare legislation, such a technical interpretation cannot be given to the second claim petition. The Tribunal has further found that being a summary proceedings, the provisions of the Code of Civil Procedure are not applicable before the Tribunal. Challenging the said order, the present revision petition has been filed.

3.The learned Counsel appearing for the revision petitioner submitted that some of the provisions of Code of Civil Procedure are applicable to the claim petition filed before the Motor Vehicles Accidents Claims Tribunal. In the present case, the first claim petition was dismissed for default on 27.01.2010



and after a period of 11 years, a fresh claim petition has been filed claiming compensation for the same accident. He also relied upon Rule 21 of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989, in support of his contention.

4.Per contra, the learned Counsel appearing for the respondent/claimant had contended that when an application under Order 7 Rule 11 of C.P.C. is dismissed, only an appeal under Section 96 of the Code of Civil Procedure is maintainable and the present revision petition has to be dismissed. He further contended that the first claim petition was not dismissed on merits and therefore, the second claim petition is maintainable, in view of the fact that the compensation amount has not been paid by the Insurance Company.

5.I have considered the submissions made on either side and perused the materials available on record.

6.The facts captured above will clearly indicate that the respondent/claimant had filed the second claim petition seeking compensation after the first claim petition was dismissed for default. The respondent had not chosen to restore the first claim petition. As per Rule 21 of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989, the Order 9 is applicable to the Motor Accidents Claims Tribunal. As per the Order 9 Rule 9,



where a suit or a petition is dismissed for default, the second suit or the petition is not maintainable. The only option open to the party to suit or petition is to restore the same. Therefore, in the said circumstances, the second claim petition filed by the respondent herein without restoring the first claim petition which was dismissed for default, is clearly barred under the provision Order 9 Rule 9 of C.P.C. The Tribunal without considering the effect of Rule 21 of the above said Rules, has proceeded to dismiss the application filed by the Insurance Company on the ground that the previous proceedings were not decided on merits and the proceedings before the tribunal for summary in nature.

7.In view of the above said deliberations, the order of the Tribunal is not legally sustainable and the Civil Revision Petition stands allowed and M.C.O.P.No.340 of 2021, pending on the file of the Additional Sub Court, Tenkasi, is hereby struck off from the files of the said Court.

8.Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

05.02.2025

Internet:Yes/No
Index:Yes/No
RJR

To

The Motor Accidents Claims Tribunal
(Additional Subordinate Court), Tenkasi.



WEB COPY

C.R.P.(MD)No.1463 of 2





WEB COPY

C.R.P.(MD)No.1463 of 2



R.VIJAYAKUMAR, J.

RJR

C.R.P.(MD)No.1463 of 2022

05.02.2025