

P.Gunakumar Vs. R.Jayasingh

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Court : Chennai

Decided On : Nov-01-2011

Judge : T. Mathivanan, J.

Acts : Code of Civil Procedure (CPC) - Order 9 Rule 13

Appeal No. : C.M.A.(MD)No.1105 of 2011

Appellant : P.Gunakumar

Respondent : R.Jayasingh

Judgement :

1. This Civil Miscellaneous Appeal is directed against the order, dated 3.06.2011 and made in I.A.No.809 of 2010 in MCOP No.7 of 2007 on the file of the learned Motor Accident Claims Tribunal (Subordinate Court), Srivilliputtur.

2.The petitioner herein is the first respondent in the claim petition. Whereas the first respondent is the claimant and the second respondent herein is the Insurance Company with whom the vehicle of the appellant was insured at the relevant time.

3.The respondents have been served with the notice. However, they have not chosen to appear before this court, either in person or through their counsel. In this circumstance, there is no other go for this court, excepting to dispose this appeal on merit, in the absence of the respondents.

4.A claim was made by the first respondent for the injuries sustained by him, in a road traffic accident involving the vehicle of the appellant herein, bearing registration No.KA.01-A-1555, which was insured with the second respondent Insurance Company.

5.In the said claim petition, the appellant being the owner of the vehicle was served with the notice and the claim petition stood posted on 25.01.2008 for making his appearance. Since, the vehicle was duly insured with the second respondent, he had entrusted the summon along with the vakalath duly signed by him with the 2nd respondent Insurance Company and the second respondent was also requested to enter appearance on his behalf also. But instead of representing the claim petition on behalf of the appellant, the 2nd respondent Insurance Company had contested the claim petition only for himself, which resulted in passing the ex-parte decree as against the appellant on 9.1.2009. The appellant came to this fact only on receipt of the notice on the execution petition in E.P.No.68 of 2009 directing him to appear before the learned Tribunal on 22.02.2010. Thereafter, the appellant has filed the petition I.A.No.809 of 2010 to set aside the ex-parte decree, as contemplated under Order 9 Rule 13 CPC along with the petition in I.A.No.368 of 2010 to condone the delay of 705 days. That application was allowed on 12.10.2010 on payment of cost and the cost was also paid. However, the petition in I.A.No.809 of 2010 to set aside the ex- parte decree was unfortunately dismissed by the learned Tribunal. Challenging the order of dismissal, the appellant has come forward with this appeal.

6.Mr.M.Thirunavukarrasu, the learned counsel appearing for the appellant has submitted that while deciding the claim petition, the learned Tribunal has held that the appellant herein being the owner of the vehicle alone was liable to pay the compensation to the extent of Rs.2,02,000/- to the first respondent/claimant.

7.He has also adverted to that the vehicle bearing registration No.KA-01- A-1555 was duly insured with the 2nd respondent at the relevant period. If at all, any award is to be passed, that could also be awarded against the 2nd respondent, after making him liable to indemnify the loss of the appellant, as the vehicle was duly insured with him. But this fact was not considered by the learned Tribunal and

by oversight, it proceeded to pass the award against the appellant, fixing him liable to pay the compensation to the first respondent, instead of making the 2nd respondent liable. Hence, he has urged that unless and until the award of the learned Tribunal passed against the appellant is set aside, the appellant would be put into irreparable loss and hardship.

8.In this connection, Mr.M.Thirunavukkarasu, the learned counsel for the appellant has placed reliance in Venkatalakshmi @ Rathnamma vs. Bayamma and 12 others, [2003(1)CTC 603]. In this case, one of the defendants, who suffered ex-parte decree filed application to set aside the same on ground that he was minor when the suit was filed and was not aware of the ex-parte decree. This was considered by this Court and while explaining the scope and application of Order 9 Rule 13, V.Kanagaraj,J has held that decision of suit on merits against co-defendants does not bar another defendant who has been set ex-parte in suit from invoking Order 9, Rule 13. Hence, the petition was set aside and held to be maintainable. On considering the above cited decision, this court is also made up its mind to allow this appeal, as it deems to be deserved, after setting aside the order of dismissal in I.A.No.809 of 2010 in MCOP No.7 of 2007.

9.Accordingly, this appeal is allowed. The order, dated 03.06.2011 and made in I.A.No.809 of 2010 in MCOP No.7 of 2007 is set aside and the claim petition in MCOP No.7 of 2007 is remitted back to the learned Motor Accident Claims Tribunal (Subordinate Court), Srivilliputtur) with a direction to dispose the same on merit, afresh after providing sufficient opportunity to the parties concerned so as to enable them to put forth their respective contentions.

10.With the above observation, this appeal is disposed of. No order as to costs.

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