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(2013) 06 MAD CK 0063

In the Madras High Court

Case No : C.R.P. No. 857 of 2009 and M.P. No''s. 1 of 2009 and 1 of 2013

M/s. The National Insurance Co. Ltd. — APPELLANT

Vs

Thiru K. Ramesh and Others — RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 3
Motor Vehicles Act, 1988 — Section 170

Citation : (2013) 4 LW 221

Hon'ble Judges : K. Ravichandrabaabu, J

Bench : Single Bench

Advocate : J. Chandran, for the Appellant; G. Mageshkumar for R2 to R7, for the Respondent

Judgement

K. Ravichandrabaabu, J.—This Civil Revision Petition is filed against an order made in I.A. No. 1284 of 2005 in M.C.O.P. No. 805 of

2004, whereby the Court below has rejected the application filed by the petitioner herein seeking to review the award passed in M.C.O.P. No.

805 of 2004 dated 06.12.2004. The petitioner herein is the second respondent in M.C.O.P. No. 805 of 2004 on the file of the Motor Accident

Claims Tribunal, Cuddalore. The said O.P. was filed by the respondents herein seeking for compensation of Rs. 15 lakhs due to the death of one

Anandan. The claimants are his wife, children and parents. The said O.P. was contested by the petitioner herein and after hearing both sides and

considering the facts and circumstances of the case, the Tribunal passed an award, whereby the respondents therein were directed to pay a

compensation of Rs. 2,99,600/- to the claimants along with cost and interest at the rate of 9% per annum from the date of claim petition. The petitioner herein filed I.A. No. 1284 of 2005 under Order 47 Rule 3 CPC seeking to review the said award by raising various grounds. The Court

below rejected the said application by specifically observing that the grounds raised in the said application do not warrant consideration for review

and if at all the petitioner is aggrieved, they could very well file an appeal before the appropriate forum challenging the said award. Accordingly, the

Court below has rejected the application. Aggrieved against the same, the present Civil Revision Petition has been filed before this Court.

2. The learned counsel appearing for the petitioner submitted that the Tribunal has erred in passing the award without considering the fact that there

was no valid insurance available at the time of accident. It is also submitted by him that the grounds raised in the review have not been considered

by the Court below. In support of his submission, he relied on the decision reported in 2011 (1) TN MAC 832 (New India Assurance Co. Ltd.,

Arcot Woodlands Building, No. 1, Bharathi Road, Cuddalore-1 vs. S. Sivapathi and 7 others).

3. Per contra, the learned counsel appearing for the respondents submitted that the grounds raised in the application by the petitioner herein do not

satisfy the requirement under Order 47 Rule 3 CPC and therefore the petition was rightly rejected by the Court below.

4. I have heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the order

passed by the Court below and the connected papers placed in the typed set of papers.

5. The Court below, in its order, has extracted the grounds of review which are as follows:

(a) The claimants failed to discharge the burden of proof regarding Insurance.

(b) The first respondent has colluded with the claimants and so he remain exparte.

(c) No petition has been filed u/s. 170 of Motor Vehicle Act.

(d) The tribunal failed to call for records from the Insurance Company and passed award without considering the denial of insurance.

(e) There was no valid insurance.

6. A bare perusal of those grounds would only indicate that those are all not grounds for review for exercising the power under Order 47 rule 3

CPC. It is seen that those grounds were raised by the petitioner by disputing the correctness or otherwise of the award passed by the Court below

on merits. No doubt one of the grounds raised is that the Tribunal failed to consider the fact that there was no valid insurance and therefore the

award passed was not valid. It is well settled that the scope of review under Order 47 Rule 3 CPC is very limited and cannot be invoked by the

parties for re-appraisal of the entire facts, circumstances and the evidence let in by the parties. A finding on facts rendered by the Court, if appears

to be erroneous in the view of the party, it is for him to challenge the same by filing only an appeal by raising such of those grounds available.

Certainly the review is not a remedy for challenging the correctness or otherwise of an order on the ground that a point raised was not considered

or erroneously decided. The learned counsel appearing for the petitioner relied on 2011 (1) TN MAC 832 to contend that when the claimants

failed to establish that there was a valid Insurance Policy on the date of accident, Insurer cannot be said to be statutorily liable to pay

compensation. There is no quarrel about the said proposition. But the only question is as to whether such an issue can be raised before the Court

below by filing an application under Order 47 Rule 3 CPC. When the Court has given a specific finding that it has passed the award taking note of

the facts and circumstances, it is for the petitioner to challenge the said award by way of filing only an appeal and not by way of filing any review

petition. At this juncture it is to be seen that the insurance company as second respondent in M.C.O.P. did not let in any evidence. Consequently

the order passed by the Court below in rejecting to review the award does not warrant any interference as I find no illegality or infirmity therein.

Hence the Civil Revision Petition is liable to be dismissed.

7. The learned counsel appearing for the petitioner further submitted that during the pendency of the Civil Revision Petition this Court has directed

the petitioner to find out from the Insurance Company as to whether any insurance was pending at the time of the accident. He also submitted that

he has obtained a letter to show that there was no valid insurance at the time of the accident and the Insurance company has also filed an affidavit

to that effect. Therefore the learned counsel submitted that in the event of dismissal of this Civil Revision Petition, the petitioner may be given an opportunity to file an appeal.

8. Needless to say that dismissal of this Civil Revision Petition will not stand in the way of the petitioner in filing an appropriate appeal, of course by

satisfying the appellate court with sufficient cause for filing the appeal with delay. With these observations, the Civil Revision Petition is dismissed.

No costs. Consequently connected miscellaneous petitions are closed.