



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE ASHOK S.KINAGI

WRIT PETITION No. 47705 OF 2014 (GM-AC)

BETWEEN:

RANGANAIKA
S/O LATE LAKSHMANAIKA
AGED ABOUT 46 YEARS
AGRICULTURAL LABOURER
R/A KAMALANAIKANA THANDYA
YARADAKATTE POST, BUKKAPATNA HOBLI
SIRA TALUK
TUMKUR DISTRICT-572115

...PETITIONER

(BY SRI. G. RAVISHANKAR, ADVOCATE FOR
SRI. A V GANGADHARAPPA, ADVOCATE)

AND:

1. THE EXECUTIVE DIRECTOR
MYRADA, NO.2, SERVICE ROAD
DOMLUR LAYOUT
BANGALORE-560071
2. NATIONAL INSURANCE CO. LTD.
BRANCH OFFICE HINDUPURA
OPPOSITE TO RTC BUS STAND
HINDUPURA,
ANDHRA PRADESH STATE-515201

...RESPONDENTS

(BY SRI. B. R. PRASHANTH, ADVOCATE FOR
SRI. SUDHAKAR B., ADVOCATE FOR R1)



THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 07.08.2014, PASSED BY THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC AT SIRA IN MISC. NO. 1/2012 [MVC NO. 895/2008] VIDE ANN-G BY HOLDING THAT THE MISC. NO. 1/2012 IS BARRED BY LIMITATION AND THE COURT OF THE SENIOR CIVIL JUDGE, AND JMFC AT SIRA HAS NO JURISDICTION TO ENTERTAIN SUCH PETITION IF IT IS NOT ACCOMPANIED BY THE APPLICATION FOR CONDONATION OF DELAY VIDE ANN-D.

THIS WRIT PETITION COMING ON FOR FINAL HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner filed this writ petition challenging the order dated 07.08.2014, passed in Misc.No.1/2012 by the file of Senior Civil Judge & JMFC, Sira.

2. Brief facts leading rise to filing of this petition are as under:

The petitioner sustained injuries in the road traffic accident while he was traveling in a vehicle belonging to respondent No.1. A claim petition was filed by the



petitioner in MVC No.895/2008. The said petition came to be allowed in part, vide order dated 08.02.2010, awarding compensation of Rs.23,800/- payable by respondent No.1. Respondent No.1 aggrieved by the award passed by the Tribunal, filed a Miscellaneous application in Mis.No.1/2012 under Order IX Rule 13 of CPC to set aside the *ex parte* judgment and award passed in the aforesaid case. Petitioner and respondent No.2 filed their objections. Respondent No.1 got examined as PW-1 and got marked Exs.P1 to P3. Petitioner got himself examined as RW-1 and got marked Exs.R1 to R9. The MACT after recording the evidence held that respondent No.1 has made out sufficient cause for setting aside the *ex parte* award passed in MVC No.895/2008 and consequently allowed the said application and set aside the *ex parte* judgment and award, vide order dated 07.08.2014. The petitioner aggrieved by the order passed on Mis.No. 1/2012, has filed this writ petition.



3. Heard learned counsel for petitioner and learned counsel for the respondent No.1.

4. Learned counsel for the petitioner submits that the MACT has committed an error in entertaining an application filed under Order IX Rule 13 of CPC. He further submits that the impugned order passed by the MACT is arbitrary and erroneous. Hence on these grounds, pray to allow the writ petition.

5. Per contra, learned counsel for the respondent No.1 submits that respondent No.1 was not the owner of the offending vehicle as on the date of accident. He submits that respondent No.1 has transferred the vehicle in the name of Sri.H.S.Krishnappa on 11.02.2008 and the accident occurred on 06.05.2008. He submits that the petitioner was well aware of this fact. He submits that the claims Tribunal was justified in passing the impugned order. Hence on this ground he prays to dismiss the writ petition.



6. Perused the records and considered the submissions made by learned counsel for the parties.

7. The petitioner has sustained injuries in the road traffic accident and filed a claim petition in MVC No.895/2008. The claims Tribunal issued notice to respondent No.1. In spite of notice, respondent No.1 did not choose to appear before the claims Tribunal. The claims Tribunal, placing respondent No.1 as *ex parte*, proceeded to pass the award. In Mis.No.1/2012, respondent No.1 has placed on record Ex.P3 which discloses that as on the date of accident respondent No.1 was not the owner of the vehicle and it is H.S.Krishnappa who was the owner of the vehicle, as the said vehicle was transferred in the name of Krishnappa on 11.02.2008 and the accident occurred on 06.05.2008. The petitioner ought to have arrayed H.S.Krishnappa, the owner of the vehicle, as party-respondent. On the contrary, petitioner has committed an error in not arraying H.S.Krishnappa as party-respondent in the claim petition. The MACT



considering the evidence of PW-1 and the documents produced by respondent No.1 i.e., Exs.P2 to P4, has recorded a finding that as on the date of accident, respondent No.1 was not the owner of the vehicle and the said fact is not denied during the course of cross-examination by learned counsel for the petitioner. Further, the MACT has recorded that respondent No.1 has shown sufficient cause for non-appearance before the Tribunal in the claim petition. The MACT was justified in passing the impugned order. I do not find any ground to interfere with the impugned order. Accordingly, I proceed to pass the following:

ORDER

The writ petition is dismissed.

However, liberty is reserved to the petitioner to implead Sri.H.S.Krishnappa as party-respondent in the claim petition.

Registry is directed to transmit the records, forthwith.



As the matter is of the year 2008, the MACT is directed to dispose of the petition within a period of one year from the date of receipt of a copy of this order.

Parties are directed appear before the claims Tribunal on 27.02.2023, without awaiting further notice.

SD/-
JUDGE

RD