

THE HON'BLR SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL NO.385 OF 2015

JUDGMENT:

Petitioners 2 and 3 in the original claim petition filed this Civil Miscellaneous Appeal under Order XLIII Rule 1 (c) of the Code of Civil Procedure ("the Code" for brevity) assailing the orders dated 24.03.2015 of the learned Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Ongole, passed in I.A.No.2615 of 2014 in M.V.O.P.No.371 of 2011 filed under Order IX Rule 9 of the Code requesting to set aside the dismissal order dated 27.11.2014 passed in the above M.V.O.P. and restore the same to file.

2. I have heard the learned counsel for the petitioners-appellants and I have perused the material on record.

3. As per the memo in U.S.R.No.3233 of 2015 dated 25.06.2015 filed by the learned counsel for the petitioners/appellants, the respondent Nos.1 and 2 were served with notices. However, despite service of notice, none appeared for the said respondents.

4. The facts necessary for consideration, in brief, are as follows.

The first petitioner (since deceased) had originally filed the claim petition before the Tribunal claiming compensation for the injuries sustained and disability suffered on account of his involvement in a motor vehicle accident. During the pendency of the said claim petition, he had died. Therefore, the petitioners 2 and 3 herein were brought on record being his legal representatives. The Tribunal posted the matter for trial to 27.11.2014. On that date, the learned counsel for the petitioners, having filed an application for adjournment, sought time stating that one of the petitioners, who is to be examined, as a witness was unwell. The Tribunal having noted that the matter underwent several adjournments and that the petitioners are not showing interest in the matter and that sufficient cause is not shown for granting an adjournment, while dismissing the said petition, had also

dismissed the M.V.O.P. for default. On that, the petitioners 2 and 3 had filed I.A.No.2615 of 2014 for restoration. Even that petition was dismissed having regard to the fact that the matter underwent several adjournments and that petitioners 2 and 3 are not showing interest to prosecute the original petition. Therefore, the aggrieved petitioners 2 and 3 are before this Court.

5. The learned counsel for the petitioners 2 and 3 would submit that petitioners 2 and 3 are senior citizens and they are suffering with old age ailments and that on the date the OP was adjourned to 27.11.2014, the appellants-petitioners 2 and 3 were unwell and therefore, an adjournment was sought by filing an application and that the Tribunal had erroneously dismissed the petition and also dismissed the O.P. for default and that when a petition for restoration was filed, that petition was also dismissed and that on such dismissal, the petitioners 2 and 3 have lost a valuable right to claim compensation and that they being the parents of the injured (since deceased) are deprived of a substantial right and that, therefore, the Tribunal ought to have granted them an opportunity to have their case decided on merits instead of dismissing the application for restoration.

6. I have bestowed my attention to the facts and the submissions.

7. The facts which are stated, in detail, supra are not in dispute. The Court below, while dismissing the petition for adjournment and dismissing the O.P. for default had not taken note of the explanation offered for the absence of the petitioners 2 and 3 on the date on which the matter was dismissed for default but, had narrated the events regarding their absence on the previous occasions, which absences were overlooked and stood already condoned. The Tribunal ought not to have taken into consideration the earlier conduct of the petitioners 2 and 3 and ought to have considered as to any valid explanation was offered for their absence on the date the OP was dismissed for default. Be that as it may, the petitioners 2 and 3 are the aged parents of the injured-first claimant (since deceased) and according to them, the deceased-first claimant was the sole bread earner and that their valuable right to seek compensation is involved and that unless the O.P. is restored to

file and is decided on merits, they would suffer serious and irreparable loss. In matters of this nature, interests of justice would be met, if one more opportunity is given to the petitioners 2 and 3 to have their cause decided on merits, more particularly when the respondents herein are not opposing their request before this Court.

8. The Civil Miscellaneous Appeal is accordingly allowed and the orders dismissing the I.A.No.2615 of 2014 are set aside and the said petition is allowed. As a sequel, the M.V.O.P.No.371 of 2011 is restored to file. The Tribunal is directed to dispose of M.V.O.P.No.371 of 2011 as expeditiously as possible, preferably within three (3) months from the date of receipt of a copy of this judgment. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(M.SEETHARAMA MURTI, J)

29th June 2015

RRB