

THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL MISCELLANEOUS APPEAL No.182 OF 2007

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JUDGMENT: (per Hon'ble Sri Justice K.C.Bhanu)

This Civil Miscellaneous Appeal, under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is directed against the order and decree, dated 25.09.2006, in Original Petition No.2629 of 2004 passed by the Motor Vehicle Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad.

2. The appellant herein/petitioner filed the aforesaid Original Petition under Section 34 of the Act to set aside the award, dated 05.07.2004, passed by respondent No.3 herein on the ground that the sole arbitrator had misconducted himself without recording the minutes of proceedings and also without looking after the evidence properly. The learned Chief Judge, after considering the material on record, dismissed the Original Petition. Challenging the same, the present appeal is filed.

3. Learned counsel for the appellant contended that the learned Chief Judge has not taken into consideration the grounds raised in the Original Petition duly pointing out the illegalities committed by the arbitrator and hence, he prays to set aside the impugned order.

4. On the other hand, learned counsel appearing for respondent Nos.1 and 2 contended that since the arbitrator has passed the award considering the material available on record, there are absolutely no grounds to interfere with the award passed by the arbitrator and that is the reason why the learned Chief Judge rightly dismissed the

Original Petition and that order needs no interference by this Court.

5. The grounds taken in the Original Petition read as follows:

- 1) The arbitrator has not applied his mind to the actual pre-condition laid down in the previous award.
- 2) The arbitrator has ignored the material evidence.
- 3) The burden of proving the fact has been placed on the contractor.
- 4) The claims made by the contractor have not been referred to and answered by the arbitrator.

6. Section 34 of the Act provides for setting aside the arbitral award. For setting aside the award, the case of the appellant falls on any one of the grounds mentioned in Section 34 (2) of the Act. Whether the grounds in the Original Petition attract any one of the clauses in Section 34 (2) of the Act ought to have been dealt with by the learned Judge.

7. As seen from the impugned order, it is clear that the grounds raised by the appellant in the Original Petition have not been adverted to by the learned Chief Judge. Therefore the impugned order is liable to be set aside.

8. Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the order, dated 25.09.2006, in Original Petition No.2629 of 2004 passed by the Motor Vehicle Accidents Claims Tribunal Cum-III Additional Chief Judge, City Civil Court, Hyderabad, and the matter is remanded to the Court below for fresh consideration. Since the Original Petition is of the year 2004, we direct the Court below to dispose of the Original Petition within a period of three (3) months from the date of receipt of a copy of this order basing on the material available on record duly answering the contentions raised by the appellant and the respondents. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

K.C.BHANU, J

M.SEETHARAMA MURTI,
J

FEBRUARY 04, 2015
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DATE: 04.02.2015

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