

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.38 of 2009

JUDGMENT:

This appeal under Order XLIII Rule 1 of the Code of Civil Procedure ('the Code', for brevity) by the appellants/claimants is directed against the order dated 23.10.2008 of the learned Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Kadapa passed in I.A.No.1181 of 2008 in M.V.O.P.No.109 of 2007.

2. I have heard the submissions of the learned counsel for the appellants/claimants ('the claimants', for brevity). Notice sent to the 1st respondent, who is the owner of the vehicle involved in the accident was returned as 'unclaimed'. The said service was held sufficient by this Court. Since the 2nd respondent/insurance company had stated no objection for allowing the application of the claimants filed under Order IX Rule 9 of the Code, the said respondent is stated to be not a necessary party in this appeal. I have perused the material record.

3. The facts leading to the filing of the present appeal, in brief, are as follows:

The Son of the 1st claimant had died in a motor vehicle accident. Therefore, the 1st claimant and her other son together had filed a claim application before the Tribunal claiming compensation for the loss sustained by them on account of the untimely death of the said deceased due to his involvement in a motor vehicle accident. In the said claim application, the insurance company had put in appearance. However, the notice sent to the 1st respondent/owner of the vehicle could not be served. Therefore, the Tribunal had ordered for service of notice by substituted service, i.e., by publication in Eenadu. And, for filing publication, the matter was adjourned. On that day to which the OP was adjourned, the publication could not be

filed. Therefore, the MVOP was dismissed against the 1st respondent for default. In the said circumstances, an application was filed under Order IX Rule 9 of the Code stating that due to misplacement of the case bundle, the publication could not be made and that recently, during search, the case bundle was traced out and that on that the claimants came to know that the OP was already dismissed for default for non-filing of the publication. It was also urged that there are no laches or negligence on the part of the claimants and that they have got fair chances of success in the main case. On the said application, the counsel for the insurance company/2nd respondent had endorsed 'no objection'. However, the learned Tribunal by the impugned order had dismissed the said application and had refused to set aside the dismissal order for default made in the main OP. Feeling aggrieved, the claimants had preferred this appeal.

4. The learned counsel for the claimants would submit that the Tribunal ought to have appreciated the facts and circumstances in which the claimants are placed and ought to have set aside the dismissal order for default passed against the 1st respondent in the OP and ought to have permitted the claimants to prosecute their case as they are only claiming compensation on account of the untimely death of the son of the 1st claimant in a motor vehicle accident and that the Court below had failed to see the avowed objective with which the legislation was enacted.

5. I have given earnest consideration to the facts and submissions. The Tribunal had dismissed the petition of the claimants as the petition for restoration was filed after an inordinate delay of thirteen months and as the Tribunal was of the view that the claimants were not diligent in prosecuting their case. However, the fact remains that the delay had occasioned not because of any laches or negligence much less deliberate conduct on the part of the claimants. The case of the claimants is that publication could not be made and filed into Court on the date fixed by the Tribunal as the bundle was misplaced in the office of the Counsel. It is also their submission that enquiries were made immediately after the bundle was traced, and that on

such enquiries they came to know that the OP was already dismissed for default; and, that by that time the delay had already occasioned; but, not due to any laches on their part.

6. As rightly contended by the learned counsel for the appellants, for the mistake of the counsel, the claimants cannot be penalized. Viewed thus, this Court finds that the Tribunal ought to have allowed the application filed under Order IX Rule 9 of the Code and ought to have set aside the order dismissing the OP against the 1st respondent and ought to have given an opportunity to the claimants to prosecute the matter. In the well considered view of this Court, in matters of this nature, the claimants should be given an opportunity to have their cause decided on merits as such a course would sub-serves the ends of justice. For the foregoing reasons, this Court is satisfied that there is merit in the appeal.

7. Accordingly, the Civil Miscellaneous Appeal is allowed and the impugned order is set aside. As a sequel, I.A.No.118 of 2008 is allowed and the order of dismissal passed in M.V.O.P.No.109 of 2007 against the 1st respondent is set aside and the said OP is restored to file. Since the matter is a very old matter, the Tribunal is directed to take up the matter from the stage of issuance of fresh notice to the 1st respondent and dispose of the MVOP on merits and as per procedure established by law, as expeditiously as possible, preferably within six months from the date of the receipt of a copy of this judgment.

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M. SEETHARAMA MURTI, J

07th September 2015

- Note:- issue cc within a week

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