

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

**FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

**WEDNESDAY, THE EIGHTEENTH DAY OF MARCH TWO THOUSAND AND
FIFTEEN**

Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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CIVIL REVISION PETITION Nos.2556 & 2576 of 2013

Between:

Bajaj Allianz General Insurance Co. Ltd.,
Bangalore.

.. Petitioner

AND

H.Y. Rajasekhar @ Raju,
S/o. K. Yellappa,
27 years, R/o. Rajavanth, Kothakota,
Pavagada Taluk, Thumkur Dist.,
Karnataka & another

.. Respondents

The Court made the following:

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COMMON ORDER:

These two civil revision petitions are filed by M/s. Bajaj Allianz General Insurance Company Limited, Bangalore, aggrieved by the order, dated 28.02.2013, passed by the Motor Accident Claims Tribunal (Additional District

Judge), Hindupur, in I.A.Nos.909 and 910 of 2002 in O.P.No.88 of 2011.

2. The claimant filed O.P.No.88 of 2011 claiming determination of compensation of Rs.6,00,000/- on account of injuries sustained by the claimant in a motor accident on 03.06.2009. The case of the claimant/respondent No.1 is that while he was travelling on a motor cycle, a tractor bearing No.AP 21V 0192 dashed against the motor vehicle causing damage to the vehicle as well as injuries to the petitioner. The petitioner is the insurance company, which insured the above tractor. Therefore, the insurance company is arrayed as Respondent No.2 in the above O.P. Evidence on behalf of the claimant was concluded and evidence on behalf of the respondents was also concluded. The Deputy Manager was cited as Respondent Witness No.2 and A. Ravi Chandran was cited as Respondent Witness No.4. Contending that the statement given by R.W.4 was contrary to the statement recorded by the Investigator of the petitioner company, which is saved in a CD and the CD along with the transcript was filed in O.P., the petitioner company, therefore, seeks to declare him as hostile and initiate action against him for speaking falsehood. Praying to declare him hostile witness and permit the company to recall and cross-examine him in the Court, I.A.No.910 of 2012 is filed. Since the evidence is already closed, in I.A.No.909 of 2012 the prayer sought was to reopen the petitioners' evidence.

3. By the orders assailed in these two civil revision petitions, the prayers sought in both the I.A Nos.909 & 910 of 2012 are rejected.

4. Learned counsel for the petitioner contends that the claim of the claimant was that the tractor insured by the petitioner company was involved in the accident and RW4 was shown as a person witnessing the accident. Preliminary investigation done by the insurance company showed that R.W.4 was not physically present when the accident took place and as the insurance company seriously disputed the fact of tractor involved in the accident through T. Venugopal the insurance company sought to bring the true fact of non-presence of Venugopal at the time of accident. In the investigation conducted

by the petitioner company after receiving of claim, the petitioner company found out from R.W.4 that he was not physically present when the accident took place, but he was in his home and he came to the site after the accident, shifted the claimant to hospital for treatment. This statement, given by R.W.4 during preliminary verification, was recorded and the same was copied into a CD, which was filed in the Court. Contrary to his earlier statement, he in his deposition has stated that he was present at the scene of accident. Learned counsel for the petitioner contends that the petitions are filed only to bring out the true facts. Learned counsel for the petitioner further contends that the Court below erred in not granting the prayer sought in I.A.Nos.909 & 910 of 2012 only on the ground that the evidence was already closed. The Court erred in holding that there is no need to once again examine R.W.4 by recalling him and reopening the petitioner's evidence.

5. Learned counsel for the respondents contends that even the statement recorded by the Investigator revealed that T. Venugopal took the claimant to the hospital. The fact that he took the claimant to the hospital immediately after the accident occurred would show that T. Venugopal was present when the accident took place. The petitioner company had sufficient opportunity to controvert the statement given by T. Venugopal during the chief examination and having not availed the said opportunity, there is not justification to recall the witness and to cross-examine him by treating him as hostile witness. Learned counsel for the respondents further contends that recalling of their witness does not arise. Therefore, the claim is not valid. He further contends that the petitioner has no right to insist for recalling of witness under Order 18 Rule 17 of the Civil Procedure Code, 1980 (for short, 'CPC'). It vests discretion in the Court and in valid exercise of the discretion vested in the Court, rejected the prayer sought in the two I.As. Learned counsel for the respondents, therefore, submits that there is no error in the order. The revision petitions are filed only to protract the litigation and deny the entitlement of the petitioner to receive compensation.

6. The parameters of exercise of power under Order 18 Rule 17 CPC is well settled. The provision only enables the Court to seek clarification on any

doubt regarding the evidence led by parties and does not intend to fill up omissions in the evidence already adduced. However, such power can be exercised either on application by the parties or *suo moto*. It has to be used sparingly in an appropriate case. The witness cannot be recalled and re-examined merely on the ground that no prejudice would be caused to the other side.

7. However, the present applications are filed not only under Order 18 Rule 17 CPC, but also under Section 151 CPC. The scope of exercise of discretion under Section 151 CPC is far wider. As a consequence to amendment made to the Civil Procedure Code, 1908, there is no provision which vests right in a person for recalling the witness. In the absence of such a provision, inherent power vested in the Court under Section 151 CPC can be exercised in a given case to do complete justice to the parties.

8. In ***K.K. Velusamy Vs. P. Palanisamy***, the Hon'ble Supreme Court held as under:

“There is no specific provision in the Code enabling the parties to reopen the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.”

9. On review of the entire precedents on the scope of power under Section 151 CPC, the Hon'ble Supreme Court summarises the principles which are 6 in number. Insofar as this case is concerned, the relevant principle is in para 12(a), which reads as under:

“12(a): Section 151 is not a substantive provision which *creates* or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is “right” and undo what is “wrong”, that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.”

10. As a consequence to deletion of Order 18 Rule 17-A CPC, the person cannot be remediless when he wants to bring in further evidenced. Therefore, the provision in Section 151 CPC comes to the rescue. In the instant case, such applications are filed immediately after the closure of evidence. It is the case of the respondents that the petitioner company has no further evidence which could not be brought out earlier. Since T. Venugopal was cited as witness on behalf of the revision petitioner with the hope that he would subscribe to the statements already given by him in the preliminary investigation and which was already recorded. However, to the surprise of the insurance company, false statements were made contrary to his own statements earlier recorded. Therefore, recalling of the said witness is necessary. Unless he is declared as hostile and further opportunity is given to cross-examine him in the light of the evidence available on record, grave prejudice would be caused.

11. It is a fit case to grant prayer of the petitioner in these petitions to recall R.W.4 and declare him as a hostile witness and to cross-examine him. By adopting such a course truth will come out and it would come to the aid of the Court to take appropriate decision as warranted by law with reference to the claim of the petitioner. Therefore, the orders under challenge are set aside and the Court below is directed to reopen the petitioner’s evidence (2nd respondent) in O.P.No.88 of 2011, recall R.W.4 and permit the petitioner insurance company to cross-examine R.W.4 after declaring him as hostile.

12. The Civil Revision Petitions are, accordingly, allowed. Having regard to the fact that the O.P. is of the year 2011, the parties shall co-operate for earlier disposal of the O.P. O.P. may be disposed of as expeditiously as possible preferably within a period of four (4) months. There shall be no order

as to costs. Miscellaneous petitions, if any, pending in these civil revision petitions shall stand closed.

P.NAVEEN RAO, J

Date: 18th March, 2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION Nos.2556 & 2576 of 2013

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Date: 18th March, 2015

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