

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4437 of 2015

ORDER:

Heard learned counsel for the revision petitioners, no other than respondent Nos.1 and 2 of motor accident claim O.P.No.802/2008 being driver and owner of the auto trolley bearing No.AP-36-W-7513, insured with revision petition 2nd respondent shown as 3rd respondent to the claim petition and the driver and owner remained exparte and insurer contested before the Tribunal that the driver was only having learner's license to drive non transport vehicle in question requires LMV transport, thereby no valid license and the insurance company is not liable and Tribunal, having accepted the contention, fixed the liability on respondent Nos.1 and 2, revision petitioners herein, for a compensation of Rs.3,13,440/- with interest @ 6% per annum vide award dated 16.05.2014. Same is impugned with delay condonation application and to set aside the exparte decree and the learned I Additional District Judge, Warangal, allowed the application under Section 5 Limitation Act in I.A.No.872 of 2015 by kept pending the Order 9 Rule 13 CPC application still and subject to condition of depositing half of the exparte decree amount. It is now impugned in the revision. Though the law clearly says in setting aside the exparte decree, conditions shall not be erroneous but just can be imposed including to deposit amount. Here the fact remains the policy covered the risk, but for the contention of insurer to absolve from liability, but driver not possessed valid driving license.

The contention of the revision petitioners is that the Tribunal should have ordered pay and recovery therefrom instead of totally exonerating the insurer that is main contest left open. No doubt this is a strong case in favour of the revision petitioners herein. It is practically an *exparte* decree and trial Court did not consider the matter on merits as to whether the insurer be totally exonerated or it requires pay and recovery thereby it is prone to set aside the *exparte* decree and when such is the case had the lower Court disposed of the application under Section 5 of the Limitation Act with the *exparte* decree set aside petition there could be some impugning but for in disposal of the application under Section 5 Limitation itself in ordering to deposit half of the decretal amount untenable therefore it requires to set aside and remit back to decide along with application under Order 9 Rule 13 and if necessary only to deposit the costs of the litigation for there is force in the contention that the insurer can be made liable to the extent of pay and recovery.

No doubt, it is the submission of the learned counsel for the insurer that the scope of revision is very limited and there must be an illegality or impropriety to the prejudice of the party seeking revision as per the expression of the Apex Court in **Shalini Shyam Shetty & Anr Vs. Rajendra Shankar Patil** in Civil Appeal No.5896 of 2010. In fact as observed supra the very order of the lower Court in disposal of the Section 5 Limitation Act in directing to deposit half of the decree costs per se when unsustainable, it is prone to revision.

Accordingly and in the result, the revision petition is allowed and remanded to the lower Court for fresh disposal by setting aside the order dated 01.10.2015 in I.A.No.872 of 2015.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.09.2016
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