

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CMA No.82 of 2009

Date:18.02.2016

Between:

National Insurance Company Limited
rep by its Branch Manager, Ponnuru.

... Petitioner.

AND

Machala Padma and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CMA No.82 of 2009

JUDGMENT:

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This appeal is preferred challenging order dated 11-11-2008 in I.A.No.1654/2006 in O.P.No.1289/2004 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Principal District & Sessions Judge, Khammam.

2. Appellant herein is respondent No.2 in O.P.No.1289/2004 and when it was set *ex-parte* on 26-11-2004, they filed I.A.No.1289/2004 to set aside the *ex-parte* order and that petition was allowed on 15-07-2005 on condition of deposit of costs of Rs.150/- within three days, but the said condition was not complied, thereafter the

appellant herein filed petition under Section 148 CPC for enlargement of time along with receipt for payment of costs dated 19-11-2005, but that application was not considered and an *ex-parte* decree was passed on 23-11-2005 after recording evidence of claimant. I.A.No.1654/2006 is filed to set aside the *ex-parte* decree dated 23-11-2005 and the trial Court, considering the material on record, observed that there are no merits to entertain the said application and dismissed. Aggrieved by which, present appeal is preferred.

3. Heard the arguments of Advocate for appellant and no arguments are advanced on behalf of respondents-claimants.

4. Advocate for appellant-Insurance Company submitted that the order of the lower Court is contrary to law and not legal.

He submitted that Insurance Company could not deposit the costs as directed in I.A.No.1289/2004 and for that, it filed a separate petition under Section 148 CPC along with the receipt showing payment of costs, but the Court below, without considering the same, dismissed the application and on the same day, passed *ex-parte* decree by recording the evidence of claimant. He submitted that the Court below dismissed the application on the ground that appellant herein has deposited Rs.25,000/-, but that cannot be a ground for dismissal of Order 9 Rule 13 application since that Rs.25,000/- was deposited in order to prefer appeal before this Court therefore, the order of the trial Court is unsustainable.

5. As seen from the material, the appellant-Insurance Company has not preferred any appeal or revision questioning the dismissal of time enlargement petition filed under Section 148 CPC., which ultimately resulted in passing of *ex-parte* decree. Appellant being a second respondent in O.P.No.1289/2004, it has two options one to file a petition under Order 9 Rule 13 CPC before the trial Court to set aside the *ex-parte* decree and secondly to prefer appeal to the

appellate Court challenging the decree passed on *ex-parte* basis. Here as seen from the record, the Insurance Company has deposited Rs.25,000/- as per Section 173 of the M.V Act., which indicates that they have intended to prefer appeal questioning the decree passed by the Motor Accidents Claims Tribunal in O.P.No.1289/2004, but admittedly, no appeal is filed and only application to set aside the *ex-parte* decree is filed.

6. As seen from the record, the same reasons were given in the application filed to set aside the *ex-parte* decree, which was considered by the Court below, while disposing I.A.No.1289/2004. The lower authority by considering the reasons stated by the Insurance Company sympathetically considered and passed conditional order for setting aside the *ex-parte* order, but the same was not utilized and when the application for extension of time is dismissed, the Insurance Company has not challenged that order which attained finality. Therefore, on the self-same reasons, the Insurance Company cannot invoke the provisions of Order 9 Rule 13 CPC and the trial Court rightly dismissed the application and that there are no merits in the appeal.

7. For these reasons, appeal is dismissed as devoid of merits. No costs.

8. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:18.02.2016

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