

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.557 of 2016

ORDER:

Heard the learned counsel for the petitioner. Although notice is served on the contesting respondent i.e. respondent No.3, none appears for the 3rd respondent.

2. Respondent Nos.1 and 2 are not necessary parties in the Revision Petition.

3. Petitioner sustained injuries in a motor accident on 05-11-2009. He filed M.V.O.P.No.110 of 2014 seeking compensation under the provisions of the Motor Vehicles Act, 1989. Petitioner contended that after the accident, he was admitted in a hospital run by Dr.N.Muralidhara Rao of Palakole as an in-patient, that surgery was conducted on his left hand and steel rods were inserted, for which he spent Rs.50,000/-. He relied upon a wound certificate issued by the said doctor.

4. Initially at the instance of the petitioner, an Advocate-Commissioner was appointed on 05-10-2015 to record the evidence of the said doctor. But the warrant could not be executed for certain reasons and the Advocate-Commissioner returned the warrant on 03-12-2015.

5. Thereafter, the Court below closed the evidence of the petitioner and posted the matter for the respondent's evidence to 14-12-2015.

6. Petitioner again filed I.A.No.1101 of 2015 to appoint the same Advocate-Commissioner or any other Advocate-Commissioner to examine the said doctor.

7. No counter affidavit was filed opposing this application.

8. The Court below by order dt.16-12-2015 dismissed the said application on the ground that the earlier order appointing Advocate-Commissioner could not be executed because learned counsel for the petitioner as well as learned counsel for 3rd respondent did not cooperate for its execution and that the application is now filed to again drag on the proceedings.

9. Challenging the same, this Revision Petition is filed.

10. There is no dispute that earlier the Court below had itself appointed Advocate-Commissioner but the warrant issued to the Advocate Commissioner could not be executed and the said Advocate returned warrant contending that learned counsel for the petitioner as well as 3rd respondent did not cooperate. Petitioner cannot be

made to suffer for the default of his advocate in cooperating with the Advocate Commissioner.

11. Taking into account the fact that the examination of the doctor would be crucial for the case in view of the pleading of the petitioner, the Court below in my opinion was not correct in refusing to appoint the same Advocate Commissioner to record the evidence of the doctor mentioned above.

12. Therefore, the impugned order is set aside, the Civil Revision Petition is allowed and I.A.No.1101 of 2015 is also allowed and the Court below is directed to entrust the warrant either to the same Advocate Commissioner who was earlier appointed by it to record the evidence of the above doctor or to any other Advocate Commissioner. It shall be the duty of the petitioner to ensure that his advocate cooperates with the Advocate Commissioner. This exercise shall be completed within a period two months from the date of receipt of a copy of this order. No costs.

13. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-06-2016

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