

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.2965 OF 2015

ORDER :

Present revision is filed impugning the dismissal order in I.A.No.349 of 2015, filed by the revision petitioner before the Tribunal-cum-Family Court-cum-III Additional District Judge, Vizianagaram under Section 151 CPC, who was the third respondent – insurer among the three respondents including driver and owner, in MVOP No.439 of 2011, which claim was filed under Section 166 of the Motor Vehicles Act, by the two claimants, who are wife and son of late Appa Rao, died of the motor accident.

2. Opposing the claim with the contest of the vehicle of the second respondent allegedly driver by the 1st respondent to the claim petition, insured with the third respondent not involved in the accident, while trial in progress, the insurer secured on hand summons as witness, the Investigation Officer, who conducted investigation by name G.Sanjeeva Rao, Sub-Inspector of Police, S.Kota on 08.12.2014 and however, for he did not bring the relevant case record to show relevant facts in proof of the above contention of the respondent No.3/insurer in the claim petition, the witness sought time and the Court adjourned the matter at request of the witness to appear before the Court with the record on 03.02.2015 and however, on that day he was called absent and the Court having posted the matter to 10.02.2015, on that date closed the evidence by posting the matter for arguments to 16.02.2015 and thereby on the even date i.e. 16.02.2015, the impugned order (covered application) in I.A.No.349 of 2015 was filed by the insurer to call for the witness with the record and that was on contest

ended in dismissal and impugning it the revision is filed.

3. In the revision, among the four respondents, respondents 1 and 2 are claimants, respondent No.3 is driver and respondent No.4 is owner of the offending vehicle. Notice served on respondents 1 and 3, who are 1st claimant and driver of the offending vehicle, but none appeared, thereby there is a due service under Section 27 of the General Clauses Act. Notice sent to the 4th respondent and no acknowledgment received, he was even remained *exparte* before the Tribunal including in the impugned order covered by I.A.No.349 of 2015 as can be seen from the order and therefore, a deemed service. None appeared on behalf of the claimants even among all the respondents *supra*.

4. Heard learned counsel for the revision petitioner and taken as heard the respondents and perused the material available on record.

5. The order of the lower Court in dismissing the application is by alleging lack of due diligence on the part of the petitioner the third respondent - insurer though same is not correct as can be reflected from the very docket proceedings. It is important to note that on hand summons given by the Court served by the third respondent - insurer of the claim petition on the witness, the Sub-Inspector of Police, he appeared before the Court and as he required time to produce the relevant case record, which is available in the police station undisputedly and thereby his request was allowed by the Court only and for that nothing can be attributed against the insurer - third respondent on whose hand summons, the witness was present. Once such is the case as it was at the request of the witness, the Court adjourned the matter and latter the witness failed to bring the record, for which he sought time and allowed by the Court, the Court should have been

invoked either Order 16 CPC or Sections 30 to 32 CPC by issuing bailable warrant and secure the presence of the witness. However, for no fault of the petitioner-insurer on whose instance, the witness was present and on seeking time to produce the record, opportunity given by the Court, the Court should not have been closed the evidence of him, but for issuing warrant to insist presence of the witness on execution of at least a bailable warrant and having closed even a fresh application filed though mentioning wrong provision. Once it is brought to the notice of the Court as Act of Court not sanctioned by law shall prejudice on one, on the latin maxim *Actus curiae neminem gravabit* , it is the duty of the Court even to sue motto from its inherent power to secure the presence of the witness to subserve the ends of justice at least that stage by issuing warrant.

6. The Court committed a mistake instead of doing so by dismissing the application.

7. Thus, the revision is allowed setting aside the dismissal order of the lower Court and by directing the lower Court to issue bailable warrant against the witness to produce case record and give evidence pursuant to which the revision petitioner, the third respondent in MVOP shall bear the expenses of the witness to appear before the Court and give evidence, if he claimed officially.

No order as to costs.

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

Dr.B.SIVA SANKARA RAO,J

02.08.2016

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HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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