

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

C.R.P.Nos.5397 and 5402 of 2011

COMMON ORDER :

These two revision petitions are maintained by the unsuccessful petitioner in I.A.No.934 and 935 of 2011 who is the 2nd respondent-Insurer in the pending M.V.O.P.No.152 of 2010 before the V Addl.District & Sessions Judge, Medak at Sanga Reddy. The MAC Tribunal's separate orders of the dismissal of the two applications supra were dated 25.11.2011. Those were the applications filed to reopen the evidence of the 2nd respondent-Insurance Company of the said accidental claim.

Among the respondents including the 1st respondent-owner in said claim, for examination of the District Transport Officer, of Giridh, Jarkhand State to prove the driving licence vide D.L.No.5442 of 2003,dot.29.10.2003, through an Advocate-Commissioner to whom earlier permission to examine allowed by order dated 29.08.2011 in I.A.No.728 of 2011 could not be secured since the DTO of Giridh was busy with his duty and expressed inability to come all the way from Jharkhand or to depute any person from their office.

The claimants did not choose to file counter to oppose before the trial Court in dismissal of the two applications.

The impugned docket orders show that already petition filed in I.A.No.728 of 2011 by summoning the DTO, Giridh and to summon the witnesses who did not appear to depose on behalf of the R.2-Insurer in the claim petition, thereby the evidence of R.2 was closed and the matter is posted for arguments and at this stage, I.A.No.816 of 2011 is filed for re-opening the case that was allowed and the R.2-Insurance Company employee was examined as R.W.1 and again in support of

issuing summons to the DTO Giridh from the responsibility undertaken by the learned Counsel for the Insurer to produce the witness failed to produce and the evidence was thereby closed and posted for arguments, at this stage again re-opening petition to examine the witness on commission filed without any reasons.

It is not even a case that the DTO examination is not necessary much less from any observation of the Court in dismissal that too having issued summons to secure examination of the DTO concerned and the present application again to re-open sought for is to examine the DTO on commission by appointing as Advocate-Commissioner since DTO expressed inability to attend and the original records are with the DTO.

Having regard to the above, the respective dismissal orders dated 25.11.2011 of the trial Court in I.A.Nos.934 and 935 of 2011 are unsustainable as the Insurer has to prove his case by discharging his burden that the licence placed reliance by the claimants is a fake one and not that of genuine.

In the result, these two Civil Revision Petitions are allowed by setting aside the two respective dismissal orders dated 25.11.2011 in I.A.Nos.934 and 935 of 2011 and the evidence of the R.2-Insurer is reopened and the petition to examine the DTO on commission is allowed directing the lower Court to appoint an Advocate-Commissioner and to award against Insurer not only the Commissioner fees and the expenses for the Commissioner's to and fro charges for going to Jharkhand State Giridh, to the office of the DTO concerned and also bear the accommodation expenses and further the expenses of the learned counsel for the petitioners to accompany one of the petitioners if necessary by fixing time for examination of the witnesses.

Consequently, miscellaneous petitions, if any, pending in these revisions shall stand closed.

Date:31.10.2017
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Dr. B.SIVA SANKARA RAO J,

