

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL MISCELLANEOUS APPEAL No. 43 OF 2010

JUDGMENT:

1. The appellant aggrieved by the order dated 30.06.2009 passed in I.A.No.276 of 2009 in OP.No.38 of 2005 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-II Additional District and Sessions Judge (FTC), at Adilabad, preferred this appeal.

2. The contention of the appellant is that the order of the Tribunal is bad in law as the appellant/petitioner has paid the costs of Rs.500/- with the Bar Association on 25.06.2009 itself and complied the condition imposed by the Tribunal in I.A.No.197 of 2009 dated 25.06.2009, however, as the counsel for the petitioner was held up in another Court, he could not produce the receipt before the Court.

3. Per contra, learned Counsel for the second respondent contended that till this day, the appellant/petitioner has not paid the costs imposed by the Tribunal and did not comply the order. He further contended that the appeal is not maintainable.

4. POINT:

In view of the rival contentions, the point that arises for determination is

“Whether the order of the Tribunal in I.A.No. 276 of 2009 dated 30.06.2009 dismissing the petition for restoration of OP warrants interference. “

5. A perusal of the record goes to suggest that appellant/petitioner filed OP.No.38 of 2005 claiming compensation of Rs.1,50,000/- for the injuries sustained in the motor vehicle accident. The said OP was adjourned to 24.01.2008 for the evidence of the appellant/petitioner, but due to his ill health, he could not adduce any evidence and also could not contact his counsel. Therefore, the Tribunal dismissed the OP for default. Thereafter, the appellant/petitioner filed I.A.No.197 of 2009 to condone the delay of 508 days in filing the petition to restore OP. The Tribunal allowed the said petition by order dated 25.06.2009 on condition of the appellant/petitioner pays costs of Rs.500/- on the day itself, without fail. When the matter was listed on 30.06.2009, memo showing the compliance of the order dated 25.06.2009 passed in I.A.No. 197 of 2009 was not filed. But, the receipt filed before this Court reveals that he paid the costs of Rs.500/- with the Bar Association on the same day, however, he could not file the same before the Tribunal when the case was listed on the ground that he was held up in another Court. Pertinent to note, Motor Vehicle Act is a beneficial legislation, therefore, an injured/legal representatives of the deceased should not be deprived from getting a just compensation. An endeavor has to be made to see as to how the best the intention of

legislation can be achieved so as to safeguard the interest of the victims of the accident. Dismissal of the OP for absence of the counsel would amount to denial of benefit to the injured/legal representatives of the deceased conferred under the legislation.

7. No doubt, there is lapse on the part of the appellant/petitioner in adducing the evidence as on the day of posting the OP and also absence of the counsel for the appellant/petitioner when the case was posted for compliance of the order of the Tribunal dated 25.06.2009 passed in I.A.No.197 of 2009. However, it is on record that the appellant/petitioner has complied the order dated 25.06.2009 in I.A.No. 197 of 2009 by paying the costs with the Bar Association on the same day itself, however, he could not file the same before the Tribunal as he was held up before another Court.

8. Considering the same, when this Court proposes to pay costs of Rs.1,000/- to the learned Counsel for the second respondent, for allowing the appeal, the learned Counsel for the appellant paid the costs of Rs.1000/- to the learned Counsel for the second respondent to day itself in the Court.

9. In view of the same, the present appeal is allowed, setting aside the order of the Tribunal dated 30.06.2009 passed in OP.No. 38 of 2005 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-II Additional District and Sessions

Judge (FTC), at Adilabad. Consequently OP.No.38 of 2005 is restored to its file.

10. Miscellaneous petitions pending consideration if any in the appeal stand closed in consequence. No costs.

JUSTICE N. BALAYOGI

DATED 21st March, 2018.
Msnr_x

