

HON'BLE SRI JUSTICE N.BALAYOGI

CIVIL REVISION PETITION No.70 of 2011

ORDER:

Aggrieved by the order dated 13.10.2010 passed in I.A.No.527 of 2009 in I.A.No.539 of 2007 in MVOP.No.786 of 2003 on the file of Motor Vehicle Accident Claims Tribunal-cum-V Additional District and Sessions Judge (FTC), Guntur, the present revision petition is filed.

2. The petitioner – claimant in MVOP.No.786 of 2003 filed an application, under Section 5 of the Limitation Act, to condone the delay of 301 days in filing the petition, under Order IX Rule 9 CPC, for setting aside the default order and to restore the O.P. to file. Seeking restoration of O.P, I.A.No.539 of 2007 was filed which was dismissed on 16.09.2008.

3. For restoration of I.A.No.539 of 2007, I.A.No.21 of 2009 was filed and it was dismissed on 05.08.2009 by the Trial Court as the order of dismissal was on 15.09.2008 as it was mistakenly typed as 16.09.2008.

4. The present application in I.A.No.527 of 2009, under Order IX Rule 9 CPC, was filed to condone the delay of 301 days in filing I.A.No.539 of 2007. The Trial Court dismissed I.A.No.527 of 2009 recording the finding that the delay of 301 days was not properly explained.

5. The contention of the petitioner is that the Trial Court dismissed the petition for restoration as there was no

representation and the counsel who was entrusted with matter did not represent the matter.

6. Per contra, learned counsel for the respondent No.2 – Insurance Company contended that, because of delay, the petitioner is not entitled to claim interest for 301 days.

7. Now the point for consideration is “whether the order of Trial Court, in I.A.No.527 of 2009 in I.A.No.539 of 2007 in MVOP.No.786 of 2003, suffers from any legal infirmity warranting interference.”

8. The record shows that the petitioner filed MVOP.No.786 of 2003 claiming compensation for the injuries sustained by him in a motor accident that occurred on 27.03.2003. The said O.P. was dismissed for default on 12.03.2007 as there was no representation. The application filed in I.A.No.539 of 2007 to set aside the dismissal order was also dismissed on 16.09.2009 on the ground that the petitioner was not present on that day and there was no representation on his behalf.

9. In his affidavit, the petitioner averred that his counsel had shifted his practice to High Court without intimation and entrusted the matter to one of his friends, and when he enquired his previous counsel about the stage of case, he was informed that the matter was posted to 19.09.2008.

10. On 19.09.2018, he waited in the court hall till lunch break and, on enquiry, he came to know that the case stood posted to 16.09.2008. As there was no representation,

I.A.No.539 of 2007 was dismissed for default. For restoration of I.A.No.539 of 2007, I.A.No.21 of 2009 was filed but due to mistake with regard to the date of dismissal, it was recorded as 05.08.2009. As there was delay of 301 days, the present application in I.A.NO.527 of 2009 is filed to condone the delay of 301 days.

11. The Trial Court, having considered the facts put-forth by both parties, came to the conclusion that there was no representation for the petitioner since 31.01.2005 in O.P.No.786 of 2003. The petitioner was granted several adjournments and costs were imposed 14 times and petitioner from time to time sought adjournments by paying costs for 14 times. Finally, on 12.03.2007, when the matter was posted for trial on payment of costs of Rs.350/-, costs were not paid, and as there was no representation for the petitioner, petition was dismissed for default.

12. On the date of dismissal of O.P. his previous counsel informed that he entrusted the matter to one of his friend and he will look into the matter; however, the petitioner did not make any effort to contact the counsel to whom the matter was entrusted and got I.A.No.539 of 2007 dismissed. The petitioner did not take any care while drafting I.A.No.21 of 2009 and did not take steps to get the mistake amended in I.A.No.21 of 2009 till the said application was dismissed. The petitioner was not diligent in prosecuting the matter and did not choose to file the

present petition till 12.08.2009, therefore, dismissed the petition.

13. The Motor Vehicles Act is a beneficial legislation. The injured/deceased filed application and claimed just compensation. We cannot compensate the loss caused to the claimants or dependents of the deceased. If delay is not condoned, petitioner would suffer irreparable loss. The Trial Court erred in coming to the conclusion that the petitioner did not explain the delay. He clearly pleaded that his previous counsel shifted his practice to Hyderabad entrusting the record to his friend Advocate. This fact is not borne in mind by the Trial Court while disposing I.A.No.527 of 2009.

14. The Civil Revision Petition is, accordingly, allowed while setting aside the order dated 13.10.2010 passed in I.A.No.527 of 2009 in I.A.No.539 of 2007 in MVOP.No.786 of 2003. However, petitioner is not entitled to claim interest for the said period of 301 days.

Miscellaneous petitions, if any, pending, shall stand closed.

N.BALAYOGI,J

Dt:01.11.2018
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