

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 5205 OF 2018

ORDER :

Order dated 28.06.2018 in I.A. No. 281 of 2018 in O.S. No. 376 of 2015 (amended as O.P. No. 376 of 2015 as per order in I.A. No. 373 of 2018 dated 27.07.2018) is under challenge before this Court.

The above-said O.P. was filed seeking compensation of Rs. 2 lacs on account of death of Sri P. Sankaraiah, who, at the time of accident, along with his son-in-law, was travelling in an auto, which met with an accident near Surepalli and later on, died while undergoing treatment. In the said O.P., the present Application was taken out by the petitioner - 2nd respondent, under Order 8 Rule 9 of the Code of Civil Procedure (for short, 'the C.P.C') to receive the additional counter on its behalf. The case of the petitioner is that the 1st respondent, who was the owner of the vehicle, had suppressed certain facts, particularly the one that she is the owner of the vehicle involved in the accident and she being the insured cannot be a claimant as well as a recipient simultaneously. It is further stated that the said facts are unread till P.W.1 was recalled for cross-examination. If the said facts are not taken on the counter, the Insurance Company would be put to monetary loss. The Application was strongly opposed stating that it was filed only to drag on the proceedings without any *bona fides*, that too after adducing evidence and the matter was posted for arguments. The learned Additional District Judge, considering the rival claims, held that it is not justifiable and relevant to receive

the additional counter at the stage of arguments and hence, dismissed the Application.

Heard learned counsel for the petitioner. He places reliance on the judgment of the Division Bench of this Court in ***Jayavarapu Rajamma v. Jayavarapu Laxminarayana***¹, particularly para 12.

Considering the submissions made by the learned counsel for the petitioner and also considering the fact that the O.P. is at the stage of arguments, this Court is of the opinion that no notice is required to be issued to the respondent.

In the judgment cited by the learned counsel, the Division Bench, while answering the reference, in paragraph 8, had held as under:

“ 8. In *Oriental Insurance Company Limited v. Jhuma Saha*, the owner driving the vehicle died in the accident not involving any other vehicle. Observing that the liability of the insurer company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property and that if the insured cannot be fastened with any liability under the provisions of the Act, the question of the insurer being liable to indemnify the insured does not arise, the Apex Court referred to *Dhanraj's case* (supra), with approval. As the additional premium was not paid in respect of the entire risk of death or bodily injury to the owner of the vehicle, Section 147(1)(b) which in no uncertain terms covers a risk of a third party only was held attracted.’

A perusal of the above judgment does not disclose that the Division Bench had an occasion to consider the similar argument, which the petitioner has advanced in the present case. It is the specific case of the petitioner that the claimant being the owner of

¹ 2007(6) ALD 306

the vehicle could not have filed the claim petition on the death of her husband, making herself as the respondent - owner of the vehicle. In the first blush, the argument of the learned counsel appears to be attractive, but however, it may be noted that the claimant had filed the O.P. seeking compensation under the Motor Vehicles Act, 1988 being the wife of the deceased husband and in the capacity of a legal heir. Her identity as the owner of the vehicle and insured is different for the purpose of O.P. Merely because the claimant happens to be the owner of the vehicle, once there is no dispute that the vehicle was involved in the accident, her right to claim, in the capacity of a legal heir of the deceased, does not cease to exist. In that view of the matter, the argument advanced by the learned counsel for the petitioner is liable to be rejected.

Further, it is to be noted that the petitioner had invoked Order 8 Rule 9 C.P.C. seeking additional grounds to be taken on record. In this context, it is pertinent to extract Order 8 Rule 9, which reads as under:

“Subsequent pleadings: No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.”

Learned Sessions Judge had rejected the Application taking into consideration the fact that the O.P. itself came to be filed in 2015 and the evidence of both sides has already been recorded and the matter has been posted for arguments and further, the

averments mentioned in the counter were already elicited from the cross-examination of P.W. 1 and the very same facts were mentioned in the evidence of R.W.1. There is no reason forthcoming except stating that the claimant had suppressed the facts for the delay in filing the Application invoking Order 8 Rule 9 C.P.C. In those circumstances, this Court, in exercise of its jurisdiction under Article 227 of the Constitution of India, does not see any ground warranting interference with the order under Revision. The Civil Revision Petition is therefore, liable to be dismissed. However, considering the material on record and also considering the observations of the learned Sessions Judge that evidence has already been let in by both the parties and the matter was at the fag end of hearing arguments, it is open to the petitioner to urge any legal grounds available to them.

The Civil Revision Petition, subject to the above observations, is dismissed. No costs.

Miscellaneous Applications, if any shall stand closed, consequently.

CHALLA KODANDA RAM, J

03rd October 2018

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