

THE HONOURABLE JUSTICE G. SRI DEVI

CIVIL REVISION PETITION No. 648 of 2020

ORDER:

The present Civil Revision Petition is filed under Section 115 of Civil Procedure Code, aggrieved by the order, dated 01.10.2019 passed in I.A.No.750 of 2018 in I.A. No.315 of 2017 in MVOP No.833 of 2013 passed by the Special Sessions Judge for trial of Cases under SCs & STs (PoA) Act, 1989 cum VII Additional District & Sessions Judge, Ranga Reddy District at L.B. Nagar, wherein the I.A. filed under Section 5 of the Limitation Act, was dismissed.

2. The facts in issue are as under:

The petitioner herein filed M.V.O.P. No.833 of 2013 under Section 166 of the Motor Vehicles Act, 1983 and Rule 475 of AP. MV Rules, 1989, against the respondents before the Special Sessions Judge for trial of cases under SCs & STs (PoA) Act, 1989 cum VII Additional District & Sessions Judge, Ranga Reddy District at L.B. Nagar, seeking compensation of Rs.30,00,000/- for the injuries sustained by him in a road accident that occurred on 16.05.2013 at about 9.30 p.m. due to rash and negligent driving of the crime lorry. The trial Court, vide docket order dated 15.02.2013 dismissed the MVOP by passing the following order:

“No representation tough pasted as last chance. Petitioner called absent. MVOP is dismissed. No costs.”

3. Thereafter, the petitioner filed I.A. No.315 of 2017 to set aside the dismissal order dated 15.02.2013 passed in MVOP No.833 of 2013, stating that he went to his native place to attend funeral of his relative and the same was informed to his counsel, but his counsel could not attend the Court in time as he was held up in traffic on that day and as such the trial Court dismissed I.A. No.315 of 2017 for default, vide order dated 02.06.2017, which reads as follows:

“Notice served against R2. Counsel for Petitioner called absent.
No representation. Process not paid to R1 within stipulated time.
Hence, petition is dismissed for default.”

Now the petitioner filed the present application i.e. I.A. No.750 of 2018 under Section 5 of the Limitation Act seeking to condone the delay of 369 days in filing the application for setting aside the order passed in I.A No.315 of 2017. Vide impugned order dated 01.10.2019, the Court below dismissed I.A. No.750 of 2018 by observing that the petitioner failed to explain the sufficient reasons for causing the delay in filing the set aside application and also he could not file the process against respondent No.1. Challenging the same, the present Civil Revision Petition has been filed.

4. Heard learned Counsel for the petitioner and learned counsel for the 2nd respondent. Notice sent to 1st respondent was returned unserved with an endorsement that the person was

unavailable. Hence, notice on the 1st respondent is deemed to be served. Perused the record.

5. Learned Counsel for the petitioner would submit that the Court below ought to have allowed the application for condonation of delay in filing the set aside petition. He would further submit that the Court below ought to have set aside the default order passed in the MVOP No.833 of 2013 and dispose of the OP on merits as the petitioner-claimant has good grounds to succeed the OP. Learned counsel would further submit that due to the accident, the left leg of the petitioner – claimant was amputated below the knee and he could not able to attend his previous work and he is suffering for livelihood. The Court below ignored the very object of M.V. Act which is a beneficial legislation and dismissed the OP filed by the petitioner – claimant. Therefore, he prays to allow the CRP and by setting aside the impugned order and consequently, allow the applications filed for setting aside the default orders dated 02.06.2017 passed in I.A. No.315 of 2017 and 16.02.2017 passed in MVOP No.833 of 2013 and restore the OP filed by the petitioner, otherwise the petitioner would be put to irreparable loss.

6. Learned counsel for the 2nd respondent would submit that the petitioner failed to represent his case before the Court below though sufficient opportunities were given to him to adjudicate the matter on merits. He would further submit that the petitioner failed

to show sufficient cause for his non-appearance before the Court below and he failed to explain the day to day delay caused in filing the set aside applications. Therefore, he prays to dismiss the present CRP.

7. A perusal of the record would disclose that the petitioner met with an accident on 16.05.2013. Due to the said accident, he lost his left leg and also his livelihood. The impugned order discloses that though sufficient opportunity was given to the petitioner in OP, he could not represent his case and therefore, the OP was dismissed for default and thereafter, the application in I.A. No.315 of 2017 for setting aside the default order was also dismissed for default as the petitioner failed to pay the process. Hence, the petitioner filed the present application along with an application for setting aside the default order passed in I.A. No.315 of 2017 with a delay of 369 days. In the affidavit filed in I.A. No.315 of 2017 and also in I.A. No.750 of 2018, the petitioner stated that he went to his native place to attend funeral of his relative and the same was informed to his counsel but, his counsel could not attend the court in time as he was held up in traffic on that day.

8. It is relevant to note that the Motor Vehicle Act, 1988, is a beneficial legislation and the benefit should be given to the injured. In the present case, the petitioner is the injured for whose benefit the said enactment was brought in by the Parliament. The petitioner

ought to have given one more opportunity to proceed with his case. The Courts below shall not deny the compensation on technicalities. As the petitioner suffered amputation and other injuries in the accident due to the rash and negligent driving of the crime lorry, which was insured with the 2nd respondent, this Court is of the view that the petitioner can be given one more opportunity to represent case and the petitioner cannot be suffered for the mistake committed by his counsel in representing the case.

9. At this stage, learned counsel for the 2nd respondent would submit that a direction may be given to the Court below to waive the interest on the delay period of (369) days while disposing of the claim petition.

10. Accordingly, the Civil Revision Petition is allowed setting aside the order dated 01.10.2018 passed in I.A. No.750 of 2018 in OP No.833 of 2013. Consequently, the dismissal orders dated 02.06.2017 and 16.02.2017 passed in I.A. No.315 of 2017 and in MVOP No.833 of 2013, are set aside and MVOP No.833 of 2013 is restored to its file. The Court below is directed to dispose of the MVOP on merits as expeditiously as possible.

The parties are directed to appear before the Court below on 24.12.2020. The petitioner is directed to file the material documents filed along with this CRP, during the course of hearing of the OP.

Further, the Court below is directed to waive the interest on the delay period of (369) days while disposing of the OP on merits.

As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

G. SRI DEVI, J

November 27, 2020

KTL



THE HONOURABLE JUSTICE G. SRI DEVI



CIVIL REVISION PETITION No. 648 of 2020

November 27, 2020

KTL