
(2002) 04 AP CK 0095
In the Andhra Pradesh High Court
Case No : LP A No. 170 of 2002

Peddaboina Laxmi and Others	Vs	APPELLANT
Lamba Road Lines and Another		RESPONDENT

Date of Decision : 01-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 4
Motor Vehicles Act, 1988 — Section 166

Citation : (2002) 6 ALD 132

Hon'ble Judges : D.S.R. Varma, J; B.S.A. Swamy, J

Bench : Division Bench

Advocate : C.S. Chakravarthy, for the Appellant; A. Malathi, for the Respondent

Final Decision : Allowed

Judgement

B.S.A. Swamy, J.—We are astonished to see the way in which the members of the legal fraternity dealing with the rights of their clients. The appellants are the claimants in OP No. 261 of 1993 on the file of the Motor Vehicles Accident Claims Tribunal-cum-District Judge, Rangareddy District. They filed the said OP No. 261 of 1993 u/s 166 of the Motor Vehicles Act and Rule 455 of the Andhra Pradesh Motor Vehicles Rules claiming a sum of Rs. 2,00,000/- towards compensation in view of the death of one Peddaboina Venkataiah. Though the Counsel for the appellants made the owner of the vehicle as party respondent he did not choose to take the summons to that respondent. In the result, the said OP No. 261 of 1993 was dismissed under Order 9, Rule 2 CPC against the owner of the vehicle. The advocate appearing on behalf of the appellants Who is present before this Court, submits that he has been practising as an advocate for about two decades and doing motor vehicle cases for more than a decade. In the year 1988 the Supreme Court in Oriental Insurance Company Limited v. Sunita Rathi (1998) 1 SSC 365, held that the Insurance Company cannot be fastened with the liability in the absence of the owner of the vehicle in the proceedings. It is not known whether the Counsel knows this judgment or not.

2. Be that as it may, the claimants have got option under Order 9, Rule 4 CPC either to file a fresh suit in the event of the suit being dismissed for non-payment of "batta" or to file an application for setting aside the order of dismissal. The Counsel did not even have recourse to any of these provisions. The Tribunal without reference to the above case allowed the claim petition and awarded compensation. Aggrieved by the said order, the Insurance Company filed CMA No. 99 of 1997 on the file of this Court contending that the Insurance Company cannot be fastened with the liability without making the owner of the vehicle as party respondent. The intended purport of the insurance policy is to indemnify the owner of the vehicle in case of accident during the subsistence of that Insurance policy. Unfortunately when the said CMA came up for final hearing, none represented the claimants and the learned single Judge of this Court allowed that appeal filed by the Insurance Company and set aside the award of the Tribunal. Hence this LPA by the claimants.

3. From the above factual narration, it is seen that the appellants-claimants have not only lost an earning member of the family but are now placed in an unfortunate situation of not even getting compensation for the errors committed by the advocate appearing for them. Had the owner of the vehicle been made as party respondent, neither the Insurance Company nor the owner of the vehicle would have no valid defence for denying the compensation. On a technical flaw committed by a member of the legal fraternity, the poor client is now placed in an awkward position. We pointed out the issue to see how justification could be done to the appellants-claimants. As Order 9, Rule 4 CPC provides for bringing of fresh suit or filing an application for setting aside the order of dismissal, we are of the view that the beneficial legislation is not frustrated due to the mistakes committed by the Counsel for the parties and, in the interests of justice, we are, therefore, inclined to hold that it is open to the appellants-claimants either to bring any fresh claim petition or to file an application for setting aside the order of dismissal passed by the trial Court. The Supreme Court, while dealing with the aspect of limitation, made it clear in *Dhannalal Vs. D.P. Vijayvargiya and Others*, , that though the claimant had to file the claim petition within a period of 12 months from the date of accident under the Motor Vehicles Act 59 of 1988) (for short "the Act") prior to 1994, in view of the deletion of the period of limitation prescribed under Sub-section (3) of Section 166 of the Act was omitted by Section 53 of the Motor Vehicles (Amendment) Act, 1994 (for short "the Amendment Act") the claimant is entitled to file the claim petition even after the period of limitation. In that case the accident took place in the year 1990. However, the Apex Court, having considered the effect of deletion of the period of limitation, held that the claim petition can be filed even after 1994 in view of the deletion of the period of limitation by the Amendment Act. In the instant case, this Court feels that substantial injustice had been caused to the appellants-claimants. In the interest of justice, the defect, which was affected on behalf of the appellants-claimants, has to be taken note of. Since no period of limitation is prescribed in view of the Amendment Act and the Supreme Court held in

Dhannalal v. D.P. Vijayvargiya (supra) that even to the proceedings pending under the Act the beneficial legislation extends, we are inclined to set aside the order of the Tribunal as well as the order of the learned single Judge in CMA reversing the judgment of the Tribunal and remand the matter back to the Tribunal for fresh disposal by following the procedure laid down under Order 9, Rule 4 CPC.

4. Before parting with the case, we would like to go on record that this Court has been insisting highest professional conduct from the members of the legal fraternity. But any amount of persuasion is not yielding good result. In the result, the poor clients who do not know the procedural laws are subjected to severe injustice. It is for the Bar Council to take into consideration the agony and pain expressed by this Court over the conduct of the parties and see that remedial measures are taken; otherwise the very existence of this institution will be in peril.

5. In the result, the appeal is allowed. There shall be no order as to costs.