

(2011) 02 KAR CK 0049
In the Karnataka High Court
Case No : Writ Petition No. 6429 of 2011

Sri Krishna Theerthe Gowda

APPELLANT

Vs

Sri R. Rajesh and Tata AIG General Insurance Co. Ltd.

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9

Citation : (2011) 02 KAR CK 0049

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : S.G. Parthasarathy, for the Appellant; Vasanthappa, for R1 and O. Mahesh, for R2, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—Petitioner is aggrieved by the order dated 14.01.2011 passed by the XIV Additional Judge of the Court of Small Causes, Bangalore, thereby rejecting Misc. No. 165/2008 filed by the Petitioner under Order 9 Rule 9 Code of Civil Procedure. The said petition was filed seeking to set aside the judgment and award dated 22.01.2008 passed in MVC No. 659/2007.

2. It is the ease of the Petitioner that he was arrayed as Respondent. No. 1 in MVC No. 659/2007 filed by the 1st Respondent herein seeking compensation clue to the personal injuries suffered by him in a motor vehicle accident. Petitioner being the owner of the vehicle was arrayed along with the 2nd Respondent - Insurance Company as one of the Respondents. If is his further case that though service of notice of the claim petition was not duly effected on him the Claims Tribunal placed him exparte and passed the judgment and award dated 22.01.2008 holding him liable to pay compensation. Having learnt about the judgment and award passed Petitioner moved the Court, below by filing Misc. No. 165/2008 seeking to set aside the judgment and award and to restore the claim petition to provide him an opportunity to contest the case. The Court, below has found that the Petitioner was in fact served with notice and therefore, there was

no justification to allow the miscellaneous petition. As a result the Misc. Petition was dismissed.

3. I have heard the learned Counsel for the parties and perused the order under challenge. In paragraph 9 of the order, the Court below, at one stage holds that the perusal of the records disclose that the notice was served on the Petitioner. It further proceeds to find that the postal acknowledgment in the file which was addressed to the Petitioner was acknowledged by an adult member of the family of the Petitioner and therefore the Petitioner cannot deny that the notice was served on him. This reasoning of the Court below apart from being inherently contradictory does not disclose the specific finding to be recorded in a matter like this as to whether there was effective service of notice of the petition. If the notice was not served on the Petitioner, but was served on the family member, then the Court below ought to have examined the evidence on record in this regard and stated as to on whom the service was effected and how he was related to the Petitioner so that the same could have been treated as effective service or otherwise. As already stated herein above the Tribunal, at one stage holds that service was effected on the Petitioner and at the next stage finds that the service was effected on an adult member of the Petitioner family without mentioning as to who was the adult member of the family. Therefore, in such circumstances, ends of justice demands that the matter has to be reexamined by the Tribunal with reference to the evidence on record and pass a reasoned order in this regard.

4. Writ Petition is therefore, allowed. The impugned order is set aside. The matter is remitted back to the Tribunal to reconsider the miscellaneous petition after affording air and reasonable opportunity to both the parties.

5. At the stage of preliminary hearing, before issuing notice, this Court had directed the Petitioner to deposit a sum of Rs. 5,000/- as costs. Pursuant to the same Petitioner has deposited the said sum of Rs. 5,000/-. The claimant shall be entitled for the said amount and he is permitted to withdraw the same.