

(2013) 09 KAR CK 0243

In the Karnataka High Court

Case No : Writ Petition No. 16016 of 2011 (GM-AC)

The New India Assurance Co., Ltd.

APPELLANT

Vs

Sri. A. Muthuchamy @ Muthusamy @ Raju and Sri.
Munivenkatappa

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2013) 09 KAR CK 0243

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : C.R. Ravishankar, for the Appellant; N. Gopala Krishna, for R1, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 25.03.2011 passed in MVC No. 9127/2009. The petitioner-Insurance Company which is the respondent in the claim petition filed by the respondents herein had filed an application u/s 151 of CPC praying to recall the order dated 17.03.2011 so as to enable it to lead further evidence. The said application has been rejected by the Court below.

2. The Court below while rejecting the application has taken note of the fact that if at all the petitioner had intended to examine any further witnesses in that case, such request should have been made on 17.03.2011 itself when the matter was being adjourned. The very fact that an application is filed for recalling is for the reason that such request had not been made. The question however is as to whether in a circumstance of the present nature, the Court below was justified.

3. It is the contention of the petitioner-Insurance Company that their case before the Court below is that the vehicle in question which was insured by the petitioner had been implicated and the accident itself is in dispute. Therefore, the

Investigating Officer was to be examined as a witness which by inadvertence had not been brought to the notice of the Tribunal when the evidence of the respondent had been closed. When a contention has been taken up and the witness is to be examined and there was some lapse on the part of the petitioner in submitting the list of witnesses earlier seeking for examination of such witnesses and the cross-examination of RW1, the Court below in any event could have allowed the application subject to terms and opportunity could have been granted.

4. Therefore, in the interest of fair trial to both the parties, I am of the opinion that the order dated 25.03.2011 is liable to be set aside with appropriate directions on terms. Consequent thereto, the application filed by the petitioner u/s 151 of CPC is allowed. The order dated 17.03.2011 is set aside. The petitioner-Insurance Company herein which is the respondent before the Tribunal is permitted to examine the witness which it has sought to examine subject to the condition that the petitioner herein shall pay the costs of Rs. 2,500/- (Rupees two thousand five hundred only) to the claimant before the Court below. On such costs being paid by the petitioner on the next date of hearing, the Tribunal shall fix appropriate dates and a time frame for examining the witness on behalf of the petitioner. Needless to mention that if the time frame as fixed by the Tribunal is not adhered to and the opportunity is not availed by the petitioner, the Tribunal would be justified in closing the matter and thereafter the petitioner would not be heard to make out any grievance in that regard.

In terms of the above, the petition stands disposed of.