
(2004) 02 AP CK 0122
In the Andhra Pradesh High Court
Case No : CMA No. 1528 of 1999

Vaddi Raghava and Another	Vs	APPELLANT
Nekkella Surya Rao and Others		RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 5, Order 9 Rule 5(1), Order 9 Rule 5(2), Order 9 Rule 9

Citation : (2007) 1 ALT 446

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : Ch. Ramesh Babu, for the Appellant;

Final Decision : Dismissed

Judgement

T. Ch. Surya Rao, J.—The unsuccessful claimants are the appellants. They filed the claim petition for compensation of Rs. 2,00,000/- for the death of late Vaddi Sutyannarayana on account of the rash and negligent driving of the driver of the bus bearing No. AP 5 T 3355 and in view of the death of the deceased, the claimants who are the wife and son, suffered mentally and financially.

2. For the default on the part of the claimants in paying the necessary batta, the claim was dismissed as against respondents 1 and 2 who had not been served. That order was set-aside subsequently on an application filed by the claimants and again for the default of the claimants in having not taken steps as against respondents 1 and 2, their claim was dismissed as against respondents 1 and 2.

3. Enquiry had been conducted in the claim petition as against the insurer alone and at the culmination of the said enquiry, the Court below having been of the view that in the absence of the owner, the insurer cannot be made liable, inasmuch as the liability of the insurer is only to indemnify the owner and since the claim was dismissed as against the owner and driver, the claim cannot be decreed as against the insurer and ultimately dismissed the claim petition. The

claimants are now assailing the same.

4. The legal position is no more *res integra* and is now well settled. The liability of the insurer in all motor accident claims is only to indemnify the owner who is vicariously liable for the tortious acts of his driver. When there is no liability against the owner, equally there is no liability against the insurer and there is nothing for the insurer to indemnify. In view of this clear legal position, the judgment now being impugned before me in this appeal cannot be interfered with.

5. The learned Counsel for the appellants submits that in the interest of justice the matter may be remitted so as to give an opportunity to the parties to take necessary steps as against the owner and driver of the offending vehicle. It is appropriate at this stage to consider Rule 5 of Order IX CPC, which reads as under:

5. Dismissal of suit where plaintiff, after summons returned unserved, fails for three months to apply for fresh summons :- (1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of seven days from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of fresh summons, the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that-

(a) he has failed after using his best endeavours to discover the residence of the defendant, who has not been served, or

(b) such defendant is avoiding service of process; or

(c) there is any other sufficient cause for extending the time;

in which case the Court may extend the time for making such application for such period as it thinks fit.

(2) in such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

6. A perusal of the above provision shows that on three grounds indulgence can be shown by the Court as enumerated *inter alia* in Sub-rule (1) of Rule 5 of Order IX. However, in this case, the application filed to set-aside the default order under Order IX Rule 9 of C.P.C. ended in dismissal. That has not been assailed before any higher forum nor a ground has been made in the Memorandum of Appeal assailing the said order. In that view of the matter, all the three grounds mentioned *inter alia* in Sub-rule (1) of Rule 5 of Order IX are not now available to the claimants. Nonetheless, Sub-rule (2) of Rule 5 of Order IX is germane to be considered in the context. It specifically says that such dismissal of the claim for default, will not prevent the parties from bringing any fresh petition, provided that the claim is within the period of limitation. Now as

per the amended Motor Vehicles Act, there is no limitation to file the claim petition and the territorial jurisdictional limits have also been liberalized. Therefore, the order now being impugned will not come in the way of the claimants in bringing any fresh petition. Justice will not suffer in that view of the matter as it is open to them to lay a fresh claim.

7. For the above reasons, the appeals fails, and is accordingly dismissed. No costs.