

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS APPEAL No.238 OF 2016

JUDGMENT:

This revision is filed challenging the order in I.A.No.1272 of 2014 in M.A.T.O.P.No.16 of 2004 passed by the I Additional District Judge, Khammam dated 19-10-2015 whereby the learned I Additional District Judge dismissed the petition filed under Order 22 Rule 9 read with section 151 C.P.C. to set aside the abatement order dated 12-1-2009 consequent to the death of claim petitioner in M.V.O.P.No.16 of 2014.

One Syed Afzal filed M.V.O.P.No.16 of 2004 claiming compensation of Rs.2,50,000/- under Section 166 of M.V.Act alleging that while he along with his son Iqbal and an advocate while traveling in a car on 16-6-2013, the driver due to rash and negligent driving of the vehicle, lost control over the car and dashed a wall, causing injuries to the claim petitioner, his son and the advocate.

Insurance company contested the claim petition by filing counter and when the matter came up for hearing, none appeared and petition was dismissed on 5-1-2007 for non-prosecution. After several years, the petitioners filed the petition to come on record as Legal heirs of the deceased though the original claimant Afzal was alive on the date of dismissal on 5-1-2007. Since the original claimant was alive, the respondents are not entitled to come on record as L.Rs.of the deceased.

Petitioners filed applications in I.A.No.1185 of 2011 for condonation of delay in filing the petition, I.A.No.199 of 2014 for restoration of O.P.and I.A.No.1101 of 2014 to condone delay in filing the petition to bring legal heirs and the present petition is filed to set aside the abatement order. But the tribunal dismissed the petition on the ground that they did not have any knowledge about the dismissal of the petition and that there was no cause which prevented the petitioner from filing the application at appropriate time enabling the tribunal to appreciate that there is sufficient cause for their failure to pursue the proceedings at appropriate time but in the absence of any material, abatement cannot be set aside.

As seen from the record, applications filed by the petitioners for condonation of delay and for restoration of O.P. were allowed believing the cause shown by the petitioners that they have no knowledge about the dismissal of the petition. When once such cause was accepted by tribunal and when the present petition was filed on the same ground, dismissal of the said application for setting aside abatement order is not sustainable.

Therefore, I hold that order passed by the tribunal in I.A.No.1272 of 2014 in M.V.O.P.No.16 of 2004 is erroneous and the same is hereby set aside. Consequently, I.A.No.1272 of 2014 in M.V.O.P.No.16 of 2004 is allowed.

In the result, this Civil Miscellaneous Appeal is allowed. No costs.

As a sequel to the disposal of this revision, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

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JUSTICE M.SATYANARAYANA MURTHY

Dated 14-10-2016.

Dvs.



HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 14-10-2016.

Dvs