

HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE THIRD DAY OF MAY
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI
CIVIL REVISION PETITION NO: 2845 OF 2015

Between:

1. ICICI LOMARD GEN INS CO LTD., VJA, KRISHNA DIST Rep.by its
Manager (Legal), Vijayawada.

...PETITIONER(S)

AND:

1. MIRYALA VENKATA SUBBAMMA, ONGOLE & 3 OTHERS W/o.Late
Subba Rao
2. Miryala Chinna Venkateswarlu S/o.Late Subba Rao
3. Miryala Sridevi D/o.Late Subba Rao
(Respondents 1 to 3 are residents of
Miryalapalem, Ongole Town)
4. S.Guru Swamy S/o.Kasaiah, Hindu, aged 47 years,
Driver & Owner of Auto No.AP 27 V 9861, R/o.Annavarappadu, Ongole.

...RESPONDENTS

Counsel for the Petitioner(s): GUDI SRINIVASU

Counsel for the Respondents:

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CIVIL REVISION PETITION NO.2845 OF 2015

Between:

ICICI Lombard General Insurance Company Limited,
represented by its Manager (Legal), Vijayawada.

... Petitioner/Petitioner/Respondent

Versus

1. Miryala Venkata Subbamma, W/o. Late Subba Rao.
2. Miryala Chinna Venkateswarlu, S/o. Late Subba Rao.
3. Miryala Sridevi, D/o. Late Subba Rao.

(Respondent Nos.1 to 3 are residents of Miryalapalem,
Ongole Town)

... Respondent Nos.1 to 3/Respondent Nos.1 to 3

4. S.Guru Swamy, S/o. Kasaiah, Hindu, 47 years, Driver-
cum-Owner of Auto bearing No.AP27 V 9861,
R/o.Annavarappadu, Ongole.

...Respondent No.4/Respondent No.4

* * * * *

DATE OF ORDER PRONOUNCED : 03.05.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

- | | |
|--|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Order? | Yes/No |
| 2. Whether the copy of Order may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether His Lordship wish to see the
fair copy of the Order? | Yes/No |

B.V.L.N.CHAKRAVARTHI, J

*** HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CIVIL REVISION PETITION NO.2845 OF 2015

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...Respondent No.4/Respondent No.4

! Counsel for the Revision

-petitioner

: Sri Gudi Srinivasu

^ Counsel for the

**Respondent Nos.1 to 3/
Respondent Nos.1 to 3**

: Notice Returned Unserved

^ Counsel for the

Respondent No.4

: Notice Served, none appeared

< Gist:

> Head Note:

? Cases referred:

1. **2008 (1) ALD 8.**
2. **2005 (2) ALD 735.**
3. **AIR 2009 SC 628.**
4. **AIR 2004 SC 4778.**

This Court made the following:

THE HONOURABLE SRI JUSTICE B.V.L.N. CHAKRAVARTI

CIVIL REVISION PETITION NO.2845 of 2015

O R D E R:

Heard Sri Gudi Srinivasu, learned counsel for the revision-petitioner.

2. None appeared for the respondents. Admit the revision.
3. This revision-petition is directed against the Order, dated 27.03.2015 in I.A.No.551 of 2015 in M.V.O.P.No.245 of 2011 on the file of Motor Accident Claims Tribunal-cum-I Additional District Judge, Ongole, whereunder the Trial Court 'Dismissed' the application filed by the revision-petitioner under Order XVI Rule 1 and 2 of the Code of Civil Procedure, 1908 (for brevity 'CPC').
4. Learned counsel for the revision-petitioner Sri Gudi Srinivasu would submit that the Tribunal failed to appreciate the facts and the circumstances of the cases on hand and the Judgments in **Loyola Public School Society, Secunderabad vs. P.Anil Kumar and others**¹ and **B.Venkat Ram Reddy vs.**

¹ 2008 (1) ALD 8.

K.Srinivas and others², in a proper perspective and thereby came to a wrong conclusion, 'Dismissed' the application filed by the revision-petitioner under Order XVI Rule 1 and 2 of CPC for summoning the respondent No.4/owner-cum-driver of the crime vehicle involved in the accident, to produce the 'Original Policy' along with payment details allegedly issued by the revision-petitioner.

5. Learned counsel would further submit that the contention of the revision-petitioner before the Tribunal is that the claimants/respondent Nos.1 to 3 produced a photocopy allegedly issued by the revision petitioner/insurance company, and on verification of records of the revision-petitioner, it was found that no such policy was issued by the revision-petitioner Insurance Company at any point of time for the crime vehicle, and that, no such policy was ever in existence, and in those circumstances, the revision-petitioner filed the application before the Tribunal to direct the respondent No.4/owner of the crime vehicle to produce the original policy along with payment details for a just decision in the case about the claim of respondent Nos.1 to 3.

² 2005 (2) ALD 735.

6. He would further contend that the learned Tribunal failed to exercise its jurisdiction under Order XVI Rule 1 and 2 of CPC and committed material irregularity.

7. In the light of above submissions, the point that would arise in the revision-petition is as under: -

“Whether the Tribunal committed any material irregularity in the Order, dated 27.03.2015 passed in I.A.No.551 of 2015 in M.V.O.P.No.245 of 2011 on the file of Motor Accident Claims Tribunal-cum-I Additional District Judge, Ongole?”

8. **P O I N T:** -

The revision-petitioner/Insurance company is the respondent No.2 in M.V.O.P.No.245 of 2011 on the file of Motor Accident Claims Tribunal-cum-I Additional District Judge at Ongole. The respondent Nos.1 to 3 are the claimants and respondent No.4 is the owner-cum-driver of the crime vehicle involved in the accident.

9. It is an admitted fact that the claimants produced a photocopy of policy, contending that the revision-petitioner/ Insurance Company issued the original of the said policy for the

crime vehicle of the 4th respondent/owner cum driver, and it was in force at the time of accident. The respondent No.4 i.e., the owner-cum-driver of the crime vehicle, remain *ex parte* before the Tribunal and he did not appear before this Court also, even after receipt of notice. The claimants 1 to 3 did not oppose the petition before the tribunal.

10. It is also an admitted fact that the contention of the revision-petitioner/Insurance Company is that the alleged policy was not issued by the Insurance Company. Therefore, the revision-petitioner filed the application before the Tribunal under Order XVI Rule 1 and 2 of CPC to direct the respondent No.4/owner-cum-driver of the crime vehicle, to produce the original policy along with payment details, before the Tribunal.

11. The Tribunal relying on the Judgments of this Court in **Loyola Public School Society** and **B.Venkat Ram Reddy** cases referred supra, 'Dismissed' the application.

12. This Court in **Loyola Public School Society** case (supra) held that "*without coming to know the necessity to examine a party to the case as a witness, he cannot be summoned as a court witness, when he remain ex parte.*"

13. This Court in **B.Venkat Ram Reddy** case (supra) held that *“the defendant cannot compel the co-defendant to give evidence without stating reasons in his affidavit filed in the petition to summon the defendant as a witness.”*

14. Admittedly, in the case on hand the revision-petitioner before the Tribunal assigned clear and cogent reasons in the affidavit as to why summons be issued to the 4th respondent/owner-cum-driver of the crime vehicle and the purpose of his evidence. But the learned Judge of the Tribunal did not consider the said circumstances and the facts of the judgments relied on. He extracted the ‘Head-Notes’ of the said judgments, without consideration of facts, ‘dismissed’ the application.

15. Indeed, the ratio of any decision must be understood in the background of its facts and circumstances. It is well-settled that a little difference in facts would make a lot of difference in the precedential value of a decision. The Court should not place reliance blindly on decisions without considering as to how the factual matrix found in with the facts of the case on which reliance is placed. Therefore, a little difference in facts may make a lot of difference in the value of a decision.

16. In this regard, I am fortified by the Judgment of the Honorable Apex Court in **Deepak Bajaj vs. State of Maharashtra and another**³ wherein, at para-Nos.7 and 11 held as under:

“7. It is well settled that a judgment of a Court is not to be read mechanically as a Euclid's theorem nor as if it was a statute.

“11. As held in **Bharat Petroleum Corporation Limited & another vs. N.R. Vairamani & another**⁴, a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they

³ AIR 2009 SC 628.

⁴ AIR 2004 SC 4778.

do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes".

17. In the case on hand, the Tribunal did not consider the circumstances under which the revision-petitioner filed the application under Order XVI Rule 1 and 2 of CPC to issue summons to the respondent No.4 to produce Policy and to give evidence. The Tribunal simply extracted the 'Head-Notes' of the above referred two judgments and opined that the application is liable to be dismissed, inspite of the fact that the revision-petitioner in the affidavit filed before the tribunal mentioned specific and cogent reasons as to why summons shall be issued to the respondent No.4 under Order XVI Rule 1 and 2 of CPC.

18. Therefore, in the light of above facts and circumstances, this Court is of the opinion that the Trial Court erred in its decision and thereby, committed material irregularity.

19. In the result, the Civil Revision Petition is 'Allowed' setting-aside the Order, dated 27.03.2015 in I.A.No.551 of 2015 in M.V.O.P.No.245 of 2011 on the file of Motor Accident Claims Tribunal-cum-I Additional District Judge, Ongole. MVOP in the

case was filed in the year 2011. Hence, the Tribunal is directed to dispose of the case expeditiously, preferably within a period of Three (03) months from the date of receipt of the Order. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

B.V.L.N.CHAKRAVARTHI, J

3rd May 2023.

Note:

LR Copy to be marked.

B/o.
DNB