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SooperKanoon Citation : sooperkanoon.com/434130

Court : Andhra Pradesh

Decided On : Oct-29-1990

Reported in : 1991ACJ1093

Judge : M. Jagannadha Rao and ;P.L.N. Sarma, JJ.

Appeal No. : L.P.A. No. 155 of 1990

Appellant : Sharifa Bee and ors.

Respondent : General Manager, Andhra Pradesh State Road Trans. Corpn. and ors.

Advocate for Def. : K. Harinath, Standing Counsel

Advocate for Pet/Ap. : V. Ravi Kiran Rao, Adv.

Judgement :

M. Jagannadha Rao and P.L.N. Sarma, JJ.

1. This Letters Patent Appeal is preferred by the claimants in O.P. No. 207 of 1984 before the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad. The claimants are five in number and they impleaded the General Manager and the Depot Manager of the A.P.S.R.T.C. as respondent Nos. 1 and 2 in the original

petition. They also impleaded the driver of the vehicle one V. Narayana as respondent No. 3. The original petition was disposed of on 23.12.1985 in favour of the appellants awarding a compensation of Rs. 36,000/- against all the respondents who were impleaded in the original petition including the driver. It may be noted that the driver remained ex parte before the Tribunal as is clear from the decree. Against the said judgment the General Manager and the Depot Manager of the A.P.S.R.T.C. preferred C.M.A. No. 637 of 1986 to this court. In the said appeal they impleaded the claimants as respondent Nos. 1 to 5 and the driver as the 6th respondent. Unfortunately, the appeal was dismissed for default against the driver on 6.9.1989 for non-payment of batta. If the appeal was not dismissed as stated above against the driver, the present difficulty would not have arisen.

2. In the abovesaid C.M.A. the claimants filed cross-objections. In the cross-objections they showed the General Manager and the Depot Manager as respondent Nos. 1 and 2 and the driver V. Narayana as 3rd respondent. An endorsement was made below the cause-title that the 3rd respondent in the cross-objections was not a necessary party to the cross-objections. The appeal was heard and disposed of by the learned single Judge. When he came to the cross-objections, he merely stated that the cross-objections do not merit any consideration. There was no discussion.

3. In so far as the learned Judge dismissed the cross-objections, the claimants have preferred this Letters Patent Appeal.

4. When the matter came before us for admission, the learned standing counsel for A.P.S.R.T.C, Mr. K. Harinath, has taken an objection regarding the maintainability of this appeal. He pointed out that in the cross-objections filed by the claimants before the learned single Judge it was stated that the driver (3rd respondent in the cross-objections) was not a necessary party. The contention is that it is not open to the claimants to implead the driver as a respondent in this Letters Patent Appeal.

5. It is to be noticed that Order 41, Rule 14 (1) of the Code of Civil Procedure had been amended in Madras in 1927 by incorporating a proviso which stated that if a respondent was ex parte in the court below, notice to him should be dispensed

with in the appeal. Following the said rule, which is applicable in Andhra Pradesh, it has been the practice to show the name of a particular party as a respondent in the cause-title and make an endorsement that no notice need go to him in the appeal when the said respondent remained ex parte in the trial court. The abovesaid rule was, however, modified when the Civil Procedure Code was amended in 1976. We now have Order 41, Rule 14 (4) which reads thus:

Order 41, Rule 14 (4): Notwithstanding anything to the contrary contained in Sub-rule (1) it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the appellate court, unless he has appeared and filed an address for service in the court of first instance or has appeared in the appeal.

After the said amendment, it has become necessary to take out notices to a party respondent who has remained ex parte in the lower court, by impleading him in the appeal as a respondent, for the purpose of a decision in the main appeal. So far as the grant of interim orders is concerned, the abovesaid Rule in Order 41, Rule 14 (4) states that notice is not necessary. In other words, if a respondent had remained ex parte in the trial court, notices need not be taken out to him while the appellate court is passing orders in interlocutory applications, though for the purpose of deciding the main appeal it will be necessary to take out notices to such a person. In fact, it has been held so by one of us (Jagannadha Rao, J.) in *L. Sooraiah v. L. Soma Raju* 1988 (1) APLJ 107.

6. In the present case, the driver was shown as the 3rd respondent in the cross-objections preferred by the claimants before the learned single Judge. Instead of mentioning that notices need not be taken out to him, it was, by mistake, stated that he was not a necessary party to the appeal. In fact as a matter of construction of the endorsement in the Memorandum of Cross-objections, we are of the view that what all the claimants meant was that no notice need be taken to him. If really the claimants meant that he was not a necessary party, they would not have shown the driver as the 3rd respondent in the cross-objections. Another feature of the case is that the learned single Judge had not only dismissed the appeal preferred by the Corporation but also the cross-objections. In other words, no

judgment or decree adverse to the driver has been rendered by the learned single Judge while disposing of the appeal and the cross-objections. In that view of the matter the driver did not suffer any prejudice before the learned single Judge. In this Letters Patent Appeal it is open to the claimants to show the driver as the 3rd respondent and in view of our decision regarding Order 41, Rule 14 (4) offer to take out notice to the driver.

7. The submission of the learned standing counsel for the respondent Corporation does not, in our opinion, make a proper distinction regarding the maintainability of the appeal and the question of making out notices to the parties involved. The cross-objections were maintainable against the driver inasmuch as he has been shown as the 3rd respondent and the cross-objections were filed in time and the necessary court fee was paid. The cross-objectors, however, are required to take out notice to the driver, if not initially, at any rate, after the appeal preferred by the Corporation stood dismissed for default against the driver on 6.9.1989. In our view, if the appellate court came to the conclusion that it was obligatory for an appellant or a cross-objector to take out notice to a respondent who was ex parte in the trial court and that such a notice is required to be taken in view of Order 41, Rule 14 (4), it will not be proper for the court to dismiss the appeal or the cross-objections as not maintainable merely because notices are not taken to the ex parte respondent. The appeal or cross-objections would still be maintainable as all other formalities therefor have been complied with. If notice is not proposed to be taken to an ex parte respondent, the court can direct the appellants or the cross-objectors, as the case may be, to take appropriate notice to the respondent who was ex parte in the trial court. It is only when the appellants or the cross-objectors refuse to take out notices to the ex parte respondent that the court may consider the question whether any decree could be passed against the remaining respondents in accordance with law. Merely because of an endorsement that notices are not proposed to be taken to the respondent who remained ex parte, the court cannot dismiss the appeal or the cross-objections as not maintainable, unless in spite of a further direction by the court to take out notices to such parties, the appellant or cross-objector refuses to take out such notices. This is particularly so in cases relating to payment of compensation under welfare legislations. We may add one more reason as to why the appeal cannot be held to be not

maintainable. Order 41, Rule 14 (1) itself provides that the interlocutory applications can be decided even if the ex parte respondent has not been impleaded in the interlocutory applications in the appellate court. If the interlocutory applications should be disposed of without taking out notices to the ex parte respondent, that would itself make it clear that the appeal was maintainable. All that is required under the amendment of 1976 is that even in regard to the respondents who were ex parte in the lower court, the appellants or cross-objectors must take out notices. In fact, normally no fresh notices are taken out in the cross-objections if all the persons impleaded as respondents in the appeal are served and all those respondents cover the respondents in the cross-objections. It is only in cases where the appeal stands dismissed against some of the respondents for default, that it becomes necessary for the cross-objectors to take out notices afresh to such persons against whom cross-objections were filed.

8. For the aforesaid reasons, we hold that this Letters Patent Appeal is maintainable and we issue notice before admission. The appellants are permitted to amend the cause-title in this appeal also wherein a similar endorsement has been made and the learned counsel for the appellants has agreed to take out notice to the driver. We accordingly hold that the Letters Patent Appeal is maintainable and direct the appellants to take out notices to the 3rd respondent driver in this appeal.