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V. Devaraju Vs. Sivappa and anr.

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Court : Andhra Pradesh

Decided On : Jun-14-1993

Reported in : 1994(1)ALT424

Judge : S. Dasaradha Rama Reddi, J.

Acts : Motor Vehicles Act, 1939 - Sections 110D; Code of Civil Procedure (CPC) - Sections 115

Appeal No. : C.R.P. No. 2191 of 1993

Appellant : V. Devaraju

Respondent : Sivappa and anr.

Advocate for Def. : M. Srinivasa Rao, Adv. for Respondent No. 2

Advocate for Pet/Ap. : T. Niranjan Reddy, Adv.

Disposition : Petition allowed

Judgement :
ORDER

S. Dasaradha Rama Reddi, J.

1. This Civil Miscellaneous Appeal is filed against the order dt. 11-12-1987 in I.A.No. 409/1987 passed by the Motor Accidents Claims Tribunal-cum-Addl.

District Judge, Madanapalle refusing to restore I.A.No. 201/87 filed by the appellant-claimant and which was dismissed for default. The appellant-claimant has filed Original Petition in the Tribunal with a delay of 82 days and filed I.A.No. 201/87 praying the Courts to condone the delay. No appeal has been preferred by the claimant against I.A.No. 201/87 dismissing the application for condonation of delay, which has resulted in dismissal of the O.P. itself.

2. Preliminary objection has been taken by the office at the time of admission that the CM. A. is not maintainable under Section 110-D of the Motor Vehicles Act, as the order passed in I.A.No. 409/87 is not an award. I uphold the objection of the office. In Babumiyan v. Mastan, 1985 (1) ALT 47, a Division Bench of this Court has held that the order refusing to condone the delay in filing the claim petition has the effect or finally disposing of the original petition, that such an order can, therefore, be treated as an award and hence it is appealable, while the order condoning the delay which will not have the effect of terminating the claim petition, cannot be treated as an award the therefore is not appealable.

3. In the instant case, the order passed in I.A.No. 201/87 on 3-11-1987 was appealable. The order passed in I.A.No. 409/87 by the Tribunal which is not under appeal cannot be said to have terminated the proceedings in OP. Termination can be only once and terminating for the second time is contradiction in terms. The effect of the order is only affirmation of the earlier order passed on 3-11-87 dismissing the I.A.No. 201/87 for default and consequently the O.P. Thus, applying the reasoning of the Division Bench, it has to be held that no appeal lies against an order refusing to set aside the order dismissing for default the petition to condone the delay in filing the OP.

4. The appellant has requrested to rest the CMA as CRP under Section 115 CPC. It is now settled that Motor Accidents Claims Tribunal is a Civil Court for the purpose of Section 115 CPC. Accordingly, this appeal is converted into CMP and the office is directed to register the CMA as CRP.

5. The reason given by the appellant for his absence on 3-11-87 was that he was ill. The respondents have not filed any counters in the Tribunal. The Tribunal holding that the specific case pleaded in the evidence was not mentioned in the

affidavit, that.....no Medical Certificate was filed in support of the illness and that the petition to set aside the dismissal order was not filed immediately, dismissed the petition. 1 find the reasons given by the Tribunal are not correct. Merely because the appellant has not stated some material particulars viz., regarding the date of his meeting the Advocate, it does not follow that this evidence has to be disbelieved. Similarly, non-filing of the Medical Certificate is not fatal. Perhaps if the petitioner was asked in his cross-examination about this fact, he would have filed the same. Similarly, the non-filing of the petition to set aside the dismissal order immediately is no ground to reject the LA. The appellant has got 30 days time to file the petition and the law does not require that he should file it immediately after the date of knowledge of the dismissal.

6. In view of all this and in view of the fact that no counters were filed by the respondents in the Tribunal, I allow the Revision petition and direct the Tribunal to dispose of on merits the I.A.No. 201/87 filed for condonation of delay of 82 days in filing the OP as expeditiously as possible, as the matter arising out of an accident that took place on 3-8-86.

7. Accordingly, the civil revision petition is allowed against 2nd respondent only. No order as to costs.

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