

**IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C.,
HAGARIBOMMANAHALLI.**

Dated this the day of 26th April 2018.

**PRESENT: SRI. B.C. CHANDRASHEKAR., B.A., LL.B.
Senior Civil Judge & J.M.F.C.,
Hagaribommanahalli.**

Misc. No. 01/2018

PETITIONER :

- 1) Smt. Basamma W/o Late Siddappa,
Aged about 40 years, House wife
R/o Magimavinahalli village in
H.B.Halli Taluk Ballari.
- 2) Sri. Srikantha S/o Late Siddappa,
Aged about 21 Years. Student R/o
Magimavinahalli village in H.B.Halli
Taluk Ballari.
- 3) Shilpa D/o Late Siddappa Aged
about 20 years student R/o
Magimavinahalli village in H.B.Halli
Taluk Ballari.

(By Sri. C. Basavaraj, adv)

V/s

RESPONDENT:

- 1) Sri. Rotti Babu S/o Umeshappa,
Driver of Tractor bearing No. KA 35
T 2378 Trailer No. KA 35 2379 R/o
Magimavinahgalli village in
H.B.Halli Taluk Ballari District.
- 2) Smt. Jambavva W/o Late K.
Venkappa, Major owner of Tractor
R/o Magimavinahalli village in
H.B.Halli Taluk and Ballari District.

- 3) The Oriental insurance company Ltd
by its Branch Manager station road
Hosapete.

(R 1 & 2: by K.P.K, R 3 : Exparte)

ORDER

This is a petition filed by the petitioners praying to set aside the dismissal order dated: 16.11.2015 in M.V.C. No. 261/2012 and to restore the same in its original stage.

2. The brief facts of the petition averments are that they have filed a MVC petition bearing M.V.C. No. 261/2012 against the respondents claiming compensation before this court as the husband of the 1st petitioner and father of 2nd petitioner was died in the accident. The respondents have appeared and case posted on 16.11.2015 for petitioner evidence. But due her ill health she was absent on that and the case dismissed for default. Since she was suffering from fever she was unable to present before the court and it is a bonafide reason. Later on they approached their counsel and came to know about the dismissal of the petition. Immediately they applied the certified copy of the order and filed this petition to set aside the order dated 16.11.2015 and to restore the MVC 261/2012. If this petition is not allowed they will put into irreparable loss and injustice. On the other hand no injustice will be caused to the respondents. Hence they prayed to set aside the

dismissal order dated 16.11.2015 in MVC 261/2012 on its original stage.

3. On receipt of notice the respondents have appeared through their counsel but not filed any objection.

4. In order to prove the claim the 1st petitioner herself has examined as P.W. 1 and produced the copy of the order sheet in M.V.C. No. 261/2012 and marked as Ex.P-1. The respondents have not submits any evidence.

5. Heard the arguments. Perused.

6. On the basis of the above following points are arise for my consideration:

1. Whether the petitioners prove that, there was sufficient cause for them for the non-appearance when the case called for hearing?

2. What order?

7. My answers to the above points are as here under.

Issue No. 1: Affirmative.

Issue No. 2: As per the final order.

REASONS

8. **Point No. 1** : Since the petitioners were not present when the case reserved for petitioner evidence it came to be dismissed for default vide order dated 16.11.2015 in MVC 261/2012. Now the petitioners are contenting that since the

1st petitioner was suffering from ill health and jaundice she did not appeared before the court on that day. Hence, they filed this petition praying to restore the petition. In order to prove the contention the 1st petitioner herself has examined as P.W. 1 and reiterate the petition averments in her affidavit. Apart from her evidence she has produced the copy of the order sheet in MVC 261/2012 which disclosing that when the case reserved for petitioner evidence since the petitioners did not appear before the court and as there was no representation from their counsel, the case came to be dismissed of default. P.W.1 has deposed that since she was suffering from ill health and jaundice she could not appear on that day. That is the reason she did not appear before the court. Since the Respondents have not filed any objection and there is no cross examination, her evidence remained unchallenged. Hence this court of the considered opinion that petitioners have proved that, there was sufficient cause for them from their non-appearance when the case called for hearing. Hence, the MVC petition has to be restored in its original stage. However since sufficient opportunities have given the petitioners have not make use of the same and since the case dismissed for default on 16.11.2015 in the event of allowing the MVC petition they are not entitle the interest from the date of dismissal of the petition till passing of this order. According I answered point no. 1 in the affirmative.

9. **Point No. 2:** As per final order.

ORDER

The petition filed by the petitioner is hereby allowed.

The dismissal order Dated: 16.11.2015 in M.V.C. No. 261/2012 is hereby set aside. The MVC 261/2012 is restored on its original stage. The petitioners are not entitle any interest from the date of dismissal of the petition till passing this order.

The petitioner is directed to appear before the court on 14.06.2018 without expecting any notice from this court.

Office is directed to put up the file in M.V.C. No. 261/2012 on 14.06.2018.

(Dictated to the typist on computer and revised by me and then pronounced in the open court on this the 26th day of April 2018)

(B.C. Chandrashekar)
Senior Civil Judge and J.M.F.C.,
Hagaribommanahalli.

A N N E X U R E**List of witnesses examined on behalf of petitioner:**

PW.1 : Smt. Basamma.

List of documents marked on behalf of petitioner:

Ex.P. 1 : Copy of order in M.V.C. No. 261/2012.

List of documents marked on behalf of Respondent:

- NIL-

List of documents marked on behalf of Respondent:

- NIL-

(B.C. Chandrashekar)
Senior Civil Judge and J.M.F.C.,
Hagaribommanahalli.