

KARN210001582010



**IN THE COURT OF THE SENIOR CIVIL JUDGE &
J.M.F.C., AT CHANNAPATNA.**

: PRESENT :

SMT.SHUBHA, B.A.L., L.L.B.,
Senior Civil Judge & JMFC.,
Channapatna.

DATED THIS THE 03rd DAY OF JANUARY 2024

M.V.C.No.185/2012

PETITIONER:

Sri.Ishaf Ulla Sharif

(By Sri.M.M., Advocate)

V/S

RESPONDENTS:

The New India Assurance Co., Ltd., and Others

**(Respondent No.1 is
represented by Sri.C.K.M.,
Advocate, Respondent No.2**



**is represented by Sri.K.T.T.,
Advocate and Respondent
No.3(b) is represented by
Sri.R.V.K., Advocate)**

IN I.A.No.IX

APPLICANT/PETITIONER:

Sri.Ishaf Ulla Sharif

V/S

OPPONENTS/ RESPONDENT:

The New India Assurance Co., Ltd., and Others.

ORDER ON I.A No.IX

The above application is filed by the Petitioner, under Order XXVI Rule 2 and 4 read with Section 151 of Civil Procedure Code to appoint Court Commissioner to cross-examine the PW2 – Doctor, in the interest of justice and equity.



2. The above application is supported with the affidavit of the Petitioner, wherein he has stated that the doctor who treated the Petitioner was already chief examined before this court on 17.07.2015 and he was cross-examined by learned Advocate for the Respondent No.1. However, the PW2 - Doctor was not cross-examined on behalf of the Respondent No.2 since the Respondent No.2 has been placed as exparte in M.V.C.No.185/2012. That the Tribunal considering the evidence on record, passed a judgment on 04.08.2015. However, the Respondent No.2 has got restored this petition by filing Miscellaneous Petition and prayed for an opportunity to cross-examine the PW2. The PW2 is now refused to attend personally before this court. However, he has assured to co-operate if anybody from the court is appointed to cross-examine him in the hospital where he is working. Hence, on all these grounds, the Petitioner has prayed to allow the application.

3. On the other hand, the Respondent No.2 has filed objection to the above application and submitted



that Petitioner is examined the witness to prove his case and he has to tender the witness for cross-examination. That after taking several adjournments he has filed this application. That there are no reasons to appoint Court Commissioner to cross-examine the doctor witness. That it is impossible to go to the place of doctor to record evidence. If the opportunity is given, the Respondent will be put to great hardship to carry counsel to the place of doctor. That it is a duty of the Petitioner to tender the witness before this court. Therefore, the 2nd Respondent has prayed to dismiss the above application.

4. I have heard the arguments of learned advocates for both the parties on I.A.No.IX. Now the points that arise for my consideration are:

POINTS

- 1) Whether there are sufficient grounds to appoint the Court Commissioner for cross-examination of PW2 – Doctor ?
- 2) What order ?



5. My findings to the above points are as follows:-

Point No.1 : In Affirmative,

Point No.2 : As per the final order
for the following:

REASONS

6. **POINT NO.1 :-** The above application is filed by the Petitioner, under Order XXVI Rule 2 and 4 read with Section 151 of Civil Procedure Code to appoint Court Commissioner to cross-examine the PW2 – Doctor, in the interest of justice and equity.

7. The above application is supported with the affidavit of the Petitioner, wherein he has stated that the doctor who treated the Petitioner was already chief examined before this court on 17.07.2015 and he was cross-examined by learned Advocate for the Respondent No.1. However, the PW2 - Doctor was not cross-examined on behalf of the Respondent No.2 since the Respondent No.2 has been placed as exparte in M.V.C.No.185/2012. That the Tribunal considering the evidence on record, passed a



judgment on 04.08.2015. However, the Respondent No.2 has got restored this petition by filing Miscellaneous Petition and prayed for an opportunity to cross-examine the PW2. The PW2 is now refused to attend personally before this court. However, he has assured to co-operate if anybody from the court is appointed to cross-examine him in the hospital where he is working. Hence, on all these grounds, the Petitioner has prayed to allow the application.

8. In this case, once this tribunal had passed a judgment fastening liability on the Respondent No.2. The Respondent No.2 having placed as exparte in this case, has filed Miscellaneous Petition No.43/2016 and got the above case restored. The deposition of PW2 shows that the evidence was first recorded on 17.07.2015. Therefore, after lapse of 8 years, the PW2 quiet naturally requested the Petitioner counsel to get a Court Commissioner appointed for cross-examination. The PW2 is a Doctor who treated the Petitioner and the share made by the Process Server shows that the PW2 is now retired and he may be



carrying his profession in a private hospital in his native place. Therefore, under this circumstances, thePW2 cannot be compelled to attend the court to give evidence. Moreover, there is a provision under Civil Procedure Code for recording of evidence through Court Commissioner in such case. There this is a fit case where appointment of court commissioner is very much necessary for cross-examination of PW2. Since the Respondent No.2 has got restored this matter, he must co-operate with the Petitioner by cross-examining the PW2 in the presence of Court Commissioner and learned Advocate for the Petitioner. Hence, the application deserves to be allowed. Hence, I have answered the **Point No.1 in the Affirmative.**

9. **POINT NO.2:-** In view of my findings given on Point No.1 for the reasons discussed herein above paragraphs, I proceed to pass the following:



ORDER

The I.A.No.IX filed by the Petitioner under Order XXVI Rule 2 and 4 read with Section 151 of Civil Procedure Code is hereby allowed.

The Petitioner is permitted to get appointed a Court Commissioner for cross-examination of the PW2.

(Dictated to the Typist-Copyist on computer, corrected and initialed by me and then pronounced by me in the open court on this the **03rd day of January 2024**)

(SHUBHA)
**Senior Civil Judge & JMFC,
Channapatna.**