

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1882-1883 OF 2002

B.K. VITTAL RAO

... APPELLANT

VERSUS

M/S. UNITED INDIA INSURANCE  
CO. LTD. & ANR  
RESPONDENTS

...

ORDER

By an order dated 6.12.1999 the Single Judge of the High Court allowed M.F.A. No.3176 of 1998 filed by the respondent herein, the United India Insurance Company by setting aside the award passed by the Claim Tribunal in favour of the claimant.

Admittedly, the award was passed without hearing the appellant's counsel. Aggrieved thereby the appellant herein filed a Review Petition C.P. No.1997/2000 with a sworn affidavit by the counsel himself stating that the appeal was posted for hearing in the daily cause list on 06.12.1999. The counsel's name did not appear in the cause list instead of his name the name of one H.C. Shivakumar was shown in the cause list against Respondent No.2. It is further stated that the counsel was not aware of the posting of the said case and he was not able to represent the case when the matter was heard on the said day. However, review petition was also dismissed by the High Court on the ground that the matter was considered on merit.

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We are of the view that in such a situation when the triable question has been raised before the High Court, the High Court ought to have heard the counsel for the appellant and disposed of the matter after hearing the counsel. That when the matter was listed for hearing the counsel's name was not shown in the cause list was clearly indicated in the affidavit of the counsel. In view thereof, the High Court was not justified in allowing the appeal without hearing the counsel for the appellant herein. The review petition was also dismissed on the ground that the matter was disposed of on merit. Disposing of the matter on merit would mean that the matter was disposed of after

hearing both the parties.

For the reasons aforesaid, both the orders of the High Court passed in appeal as well as in review petition are not tenable in law and are accordingly set aside. The matter is remitted to the High Court for fresh disposal in accordance with law after hearing the counsel for both the sides.

The appeals are allowed.

.....J.  
( H.K. SEMA )

.....J.  
( MARKANDEY KATJU )

NEW DELHI,  
MARCH 11, 2008.

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ITEM NO.109

COURT NO.5

SECTION IVA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1882-1883 OF 2002

B.K. VITTAL RAO

Appellant (s)

VERSUS

M/S. UNITED INDIA INSURANCE CO. LTD.&ANR

Respondent(s)

Date: 11/03/2008 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. R.S. Hegde, Adv.

Mr. Chandra Prakash, Adv.

Mr. J.K. Nayyar, Adv.

Mr. P.P. Singh, Adv.

For Respondent(s)

Mr. Debasis Misra, Adv. (NP)

UPON hearing counsel the Court made the following  
ORDER

Both the orders of the High Court passed in appeal as well as in review petition are not tenable in law and are accordingly set aside. The matter is remitted to the High Court for fresh disposal in accordance with law after hearing the counsel for both the sides.

The appeals are allowed in terms of the signed order.

(PAWAN KUMAR)  
COURT MASTER

(ANAND SINGH)  
COURT MASTER

(signed order is placed on the file)