

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 69 of 2015

Mohammad Abdul Gaffar Chohan S/o Aged About 64 Years R/o Nehru Chowk
Baloda Bazaar, District- Baloda- Bazar- Bhatapara, Chhattisgarh

---- Appellant

Versus

1. Chowaram Sahu Aged About 41 Years R/o Village : Godi, Post- Arjuni, P.S.-
Bhatapara, Chhattisgarh
2. Branch Manager, ICICI Lombard General Insurance Company Limited, Lalganga
Shopping Mall, Raipur, Chhattisgarh

---- Respondents

Shri Pawan Kesharwani, counsel for the appellant/s.
Shri Pushpendra Kumar Patel, counsel for respondent no.1.
Shri Amrito Das and Shri P. Acharya, counsel for respondent No.2.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

25/01/2016

Heard finally.

This appeal is directed against order dated 19/02/15 by which the Claims Tribunal has rejected appellant's application under Order 9 Rule 9 CPC.

2. Learned counsel for the appellant argued that even though sufficient cause was shown for non-appearance, the Claims Tribunal has rejected the application by adopting hypotechnical view that proper numbers have not been given in the application and copy of the order impugned was not filed. He submits that even if the application was lacking, the appellant ought to be granted sufficient time to remove those defects so that the application could be considered on those defaults.

3. On the other hand, learned counsel for the respondents support the order of the Claims Tribunal by submitting that because of the default in the application, the Claims Tribunal was left with no option except to dismiss the same.

4. Considering the submission of learned counsel for the parties and perusal of records, I find that the Courts below rejected application under Order 9 Rule 9 CPC on the ground that the application was suffering from default. If that was so, the Court below ought to have first granted time to remove default and only thereafter, order had to be passed.

5. Claims Tribunal ought to have seen that it was a case of claim arising out of a motor accident. Therefore, the impugned order cannot be sustained in law and is set aside. The matter is remanded to the Claims Tribunal. The appellant shall be granted an opportunity to remove the default of mentioning incorrect numbers in the application and submission of copy of the impugned order, as referred to in the impugned order. Thereafter, the Claims Tribunal shall pass just and proper order in the matter of application under Order 9 Rule 9 CPC.

6. The appeal is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge