

HIGH COURT OF CHHATTISGARH AT BILASPUR**MA No.273 of 2006**

Banshi Sahni S/o Late Gopi Sahni, aged about 50 years, R/o New Krishna Nagar, Supela, Bhilai, P.O.Supela, P.S.Supela, District Durg (Chhattisgarh).

---Appellant

Versus

1. Santosh Singh S/o Shri Gajanand Singh Rajput, aged about 24 years, R/o BMY-Charoda, Zone-1, Qtr.No.113/D-1, District Durg (Chhattisgarh).
2. Amarjeet Singh S/o Shri S.Malik Singh, R/o Sector 2, Devendra Nagar, Raipur (Chhattisgarh).
3. The New India Insurance Company Ltd.Chembar Branch, In front of Mobiles, Bhilai – 3, District Durg (Chhattisgarh).

---Respondents

For appellant	:	Shri Animesh Verma under instruction of Shri Ashish Shrivastava, Advocate
For respondent No.3/ Insurance Company	:	Shri H.P.Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

10/10/2017

1. Present is an appeal under Section 43 Rule 1(d).
2. The facts of the case is that, the original appellant namely Shri Banshi Sahni had filed the claim petition before the 5th Additional Motor Accident Claims Tribunal, Durg under Section 166 of the Motor Vehicles Act. The Claim Petition was for the injuries sustained by the appellant in the accident that took place on 19/04/1999 when the appellant was hit by a Mini Bus bearing registration No.MP-23-J-0307 in which the appellant suffered certain injuries.
3. The Claim Petition was filed on 15/11/1999 and got dismissed for want of prosecution on 19/10/2002. The application under Order 9 Rule 9 of the C.P.C. was filed immediately which too was rejected on

30/11/2005 holding that, the application under Order 9 Rule 9 of the C.P.C. is not maintainable as the earlier order dated 19/10/2002 was not an order under Order 9 Rule 9 but an ex-parte order.

4. The said order dated 30/11/2005 was challenged by the original appellant, Banshi Sahni, before this court vide the present appeal. During the pendency of the appeal, the appellant Banshi Sahni has expired and his legal representative has been subsidized.

5. In the change circumstances this court is of the opinion that, at best, the appellants are now going to get is the compensation towards the medical and other expenses which have been incurred in the course of treatment of the appellant-Banshi Sahni.

6. In the instant case, the claim of the original appellant got dismissed even before the evidence could be recorded.

7. At this juncture, considering the fact that the miscellaneous appeal is pending consideration before this court for more than 11 years, this court is of the opinion that, ends of justice would meet if the impugned order dated 30/11/2005 and the order dated 19/10/2002 i.e. two orders passed by the Trial Court are set aside and is remitted back to the Tribunal to grant one opportunity to the appellant to lead evidence in respect of their claim and thereafter the Tribunal shall proceed to decide the claim application on its merits.

8. Considering the matter being an old matter it is expected that, the Trial Court would decide the case on priority basis at the earliest. Needless to mention that, since the original appellant has expired, the relief for which the appellants may be entitled, would be as per the provision under Section 306 of Indian Succession Act.

9. The respondent Nos.1 & 2 in spite of service and even paper publication have not entered appearance, the parties to the dispute would have the right to amend the pleadings and lead proper evidence in this regard.

10. The appeal thus stands allowed and disposed off.

11. Since the appellant as well as the Insurance Company are present before this court, let both the parties appear before the Trial Court on the 21/11/2017. The registry is directed to ensure that, the record is sent back to the Trial Court and it reaches the Court below well before 21/11/2017.

Sumit

**Sd/-
(P. Sam Koshy)
Judge**