

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A No. 10 of 2017**

1. Ravishankar Soni S/o Bhushan Lal, Aged About 30 Years R/o Village Old College Road, Near Mahadev Ghat, Champa, P.S. & Tahsil Champa, District Janjgir-Champa, Chhattisgarh(Claimant)

---- Appellant**Versus**

1. Naresh Kumar S/o Foolchand, Aged About 31 Years R/o Sharda Chowk, Janjgir, P.S. Janjgir, District Janjgir-Champa, Chhattisgarh(Driver Of Vehicle)
2. Neelkamal Rai S/o N.C.Rai, Aged About 31 Years R/o New Chandaniya Para, Janjgir, P.S. Janjgir, District Janjgir-Champa, Chhattisgarh(Owner Of Vehicle)
3. Branch Manager, National Insurance Co.Ltd. Branch Office 13 Meenu Complex, Main Road, Kosabadi Korba, District Korba, Chhattisgarh(Insurer)

---- Respondents

For Appellant:	Shri Hanuman Prasad Agrawal, Advocate
For Respondent Nos. 1 & 2:	None.
For Respondent No.3:	Shri G. V. Kutumba Rao, Advocate

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

01.08.2017

1. Heard on admission.
2. This is a Miscellaneous Appeal preferred under order 43 Rule 1 of Code of Civil Procedure, 1908 against the order dated 27.10.2015 passed by the 1st Additional Motor Accident Claims Tribunal, Janjgir, District Janjgir -Champa in M.J.C. No. 20/15, by which the application filed under order 9 Rule 9 of CPC has been rejected.
3. The undisputed facts of the case are that the Appellant/Claimant Shri Ravishankar Soni instituted a claim Petition under section 166 of Motor

Vehicles Act, 1988 (for short 'the Act') on account of an accident which occurred on 25.10.2011. The said Claim Petition was registered as Claim Case No. 22/2011, renumbered as Claim Case No. 22/2014. The matter was adjourned from time to time and it was listed for evidence also. When the matter was listed for evidence again on 19.8.2014, it was dismissed in default for his non- appearance.

4. For restoration of the aforesaid claim petition, dismissed in default on 19.08.2014, an application was made by the claimant under Order 9 Rule 9 of CPC along with an application for condonation of delay in filing the same on 20.01.2015. After considering the said application for condonation of delay, the same was allowed vide order dated 27.10.2015 by the concerned Claims Tribunal and directed for its registration as Civil Miscellaneous Judicial Case and immediately after hearing the parties, the order impugned dated 27.10.2015 has been passed while rejecting the appellant's application under order 9 Rule 9 of CPC by observing that the reasons assigned in the application for restoration are not proper and in absence of any evidence, the same cannot be accepted. As a consequence the appreciation filed under Order 9 Rule 9 of CPC for restoration of claim partition dismissed in default on 19.08.2014 has been rejected.

5. Being aggrieved, the appellant has preferred this miscellaneous appeal under Order 43 Rule 1 of CPC. Shri Agrawal, Counsel for the Appellant submits that the reasons assigned by the concerned Tribunal while rejecting the application under Order 9 Rule 9 of CPC are not proper. It is submitted further that while entertaining the said application for restoration for the Claim Petition, the Tribunal ought to have adopted a liberal view particularly when the petition was filed under the Motor Vehicles Act, 1988. Without considering

the said fact and without affording sufficient opportunity of hearing to the Appellant, the Court below by adopting hyper technical view has rejected his application for restoration vide its order impugned, therefore, the same deserves to be set aside.

6. On the other hand, Shri Rao, Counsel for the Respondent has supported the order impugned.

7. I have heard learned Counsel for the parties and perused the entire relevant papers annexed with this Miscellaneous Appeal carefully.

8. The appellant Shri Ravishankar Soni instituted a claim under Section 166 of the Act of 1988 on account of the accident which occurred on 25.10.2011. After registering the case, the matter was adjourned from time to time and when it was listed for evidence vide order dated 30.07.2014 a direction was issued that it would be the last date for the evidence. Even upon the specific directions being given, the Appellant/ Claimant has failed to appear when the matter was called on 19.08.2014, therefore, it was dismissed in default on the said date. While observing as such, particularly while referring to earlier order sheets, the Claims Tribunal has refused to allow his application filed under Order 9 Rule 9 of CPC.

9. The approach of the Tribunal as adopted appears to be hyper technical in nature and cannot be accepted. While entertaining the application filed under Order 9 Rule 9 of CPC, the Claims Tribunal ought to have adopted a liberal approach, particularly when the Claim Petition was made under the provisions prescribed under the Act of 1988. Pertinently to be noted here that while allowing the application for condonation of delay in filing the said application for restoration of the said Claim Petition vide order dated 27.10.2015, the Tribunal immediately thereafter has rejected the said

application. No opportunity whatsoever was, therefore, provided to the appellant in order to establish the reasons assigned in the said application for restoration of the said Claim Petition, which was dismissed in default vide order dated 19.08.2014. Even otherwise, the Claims Tribunal has observed by its order impugned that since in an earlier occasion, while referring to earlier order sheet, dated 30.07.2014, where a last opportunity was provided to the appellant for producing his evidence and even upon the said direction, he failed to produce his evidence and even failed to appear on 19.08.2014, therefore his application for restoration cannot be allowed. However, while entertaining the said application, the concerned Tribunal ought not to have taken into consideration the earlier observations as made because the same cannot be taken into consideration for considering the non-appearance of the appellant in subsequent date of hearings. It is the settled principles of law that a party cannot be penalized for his previous negligence and the Court has to consider that whether there was sufficient cause for the absence on the relevant date when he was absent and not of his previous conduct. At this juncture, it is relevant to note the principles laid down by the Hon'ble Supreme Court in the matter of **“Garuda Sakuntala Vs. R. K. Raizada”** reported in **(2000) 3 SCC 54**, wherein it has been observed at para 7 as under :-

“.....

“The “sufficient cause” for non-appearance refers to the date on which the absence was made a ground for proceeding ex-parte and cannot be stretched to rely upon other circumstances anterior in time.”

10. Besides, the claimant, in the instant case, has stated very specifically that since he was a handicap person and his brother was also suffering from

fever, therefore he could not inform his Counsel in time and that was the reason why he could not appear when the matter was called on 19.08.2014. In such circumstances, the concerned Claims Tribunal ought to have adopted a liberal view particularly when an application for condonation of delay has already been allowed. Having failed so and thereby dismissing the application for setting aside the dismissal of order for default on such a technical consideration would definitely defeating the cause of substantial justice. The order impugned, under such circumstances, cannot be held to be sustainable, therefore the same deserves to be and is hereby set aside.

11. In view of the aforesaid discussions, the Appeal is allowed and the Claim Petition is directed to be restored to its original number as Claim Case No.22/2014 and the concerned Tribunal Janjgir, District Janjgir-Champa is directed to decide the said Claim Petition in accordance with law. The parties are directed to appear before the concerned Claims Tribunal, Janjgir-Champa on 19.09.2017. Registry is directed to send a copy of this order to the concerned Claims Tribunal, forthwith.

12. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE