

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.133 of 2015

Satish Dewangan, S/o Sukhnath Dewangan, aged about 34 years, R/o Village Aadka Chhepdapara, Kondagaon, Post Kondagaon, P.S. Kondagaon, Revenue and Civil District Kondagaon (C.G.)

(Owner)
---- Petitioner

Versus

1. Parwati, W/o Late Kamlesh, aged about 20 years;
2. Mahesh, S/o Late Kamlesh, aged about 1 year;
3. Smt. Kalawati, W/o Somaru, aged about 45 years;

Respondent No.2 is minor Through Smt. Parwati, Wd/o Late Kamlesh (Mother)

All are R/o Village Mangnar, P.S. Darbha, Revenue and Civil District Bastar (C.G.) (Claimants)

(Address and status of Respondent No.1 is wrongly mentioned in order impugned)

4. The Branch Manager, The Oriental Insurance Co. Ltd., Branch Office Laxman Avenue, Medical College Road, Jagdalpur, P.S. Kotwali, Revenue and Civil District Bastar (C.G.) (Insurance Co.)

(Non-applicants)
---- Respondents

For Petitioner: Mr. Pravin Kumar Tulsyan, Advocate.

For Respondents No.1 to 3: -

Mr. Praveen K. Dhurandhar, Advocate.

For Respondent No.4: Mr. R.N. Pusty and Mr. Pallav Mishra, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

27/08/2018

1. The Motor Accidents Claims Tribunal has passed ex parte award against the petitioner / owner of the vehicle on 22-6-2013. The owner filed application under Order 9 Rule 13 of the CPC with a delay of 395 days which has been rejected by the Claims Tribunal against which this writ petition has been preferred.
2. Learned counsel for the petitioner would submit that the vehicle was

insured, but treating the vehicle as uninsured, liability has been fastened upon the petitioner / owner and as such, the counsel duly engaged by the petitioner / owner did not appear in the trial of the motor accident claim case and liability has been fastened, therefore, sufficient cause was shown for delay in filing the application which has not been considered and no enquiry was made on the application and it was rejected.

3. Learned counsel for respondent No.4 would oppose the petition and would support the impugned order.
4. I have heard learned counsel for the parties and perused the record with utmost circumspection.
5. The Claims Tribunal ought to have made enquiry on the application under Order 9 Rule 13 of the CPC before rejecting the application and opportunity could have been given to prove the stand taken in application to support the application for condonation of delay and to support the application for setting aside the ex parte order which has not been done.
6. In view of the above, the order impugned dated 31-1-2015 is set aside and the application under Order 9 Rule 13 of the CPC is hereby restored to its original number before the Claims Tribunal and the Claims Tribunal is directed to hold enquiry on the said application. The said exercise will be done within three months from the date of receipt of a copy of this order after hearing the parties afresh, in accordance with law.
7. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge