

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 12 of 2017**

1. Murlidhar S/o Ramadhar Chandra, Aged About 25 Years R/o Village Chhapora, Police Station Malkharoda, District Janjgir-Champa, ChhattisgarhDriver Of The Offending Vehicle Before Claim Tribunal
2. Sumit Agrawal S/o Shri S.K.Agrawal, Aged About 27 Years R/o Village Sarwa, Police Station And Tahsil Kasdol, District Baloda Bazar-Bhatapara, Chhattisgarh, Presently Residing At Vikash Nagar, Ward No.4, Jaijaipur, Police Station And Tahsil Jaijaipur, District Janjgir-Champa, ChhattisgarhOwner Of The Offending Vehicle Before Claim Tribunal,

---- Appellants**Versus**

1. Radhavallabh Mishra S/o Jageshwar Mishra, Aged About 70 Years
2. Suraj Bai W/o Radhavallabh Mishra, Aged About 63 Years

Both are R/o Village Nawagarh, Police Station Nawagarh, District Janjgir-Champa, ChhattisgarhClaimants Before The Claim Tribunal

3. Cholamandalam M. S. General Insurance Company Ltd. 7/8, 1st Floor, Rajeev Plaza, Garden Side Bilaspur, ChhattisgarhInsurer Of The Offending Vehicle

---- Respondents

For Appellants	:	Ms. Laxmeen Kashyap, Advocate
For Respondents No.1 & 2	:	Shri Sunil Sahu, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****05/09/2018**

1. The present appeal is against the order dated 16.12.2016 whereby an application under Order 9 Rule 13 CPC preferred to set aside an award by the

appellants has been dismissed. The application was filed to set aside an award dated 25th of June, 2015 passed in claim case No.3/12 by the first Additional Motor Accident Claim Tribunal, Baloda Bazar.

2. The perusal of the award which is attached with this appeal would show that on 05.09.2011, an accident occurred by an offending truck bearing No.CG 04 E 3546 which dashed a tata nano car, whereby three inmates of the car died. The mother and father of one of the deceased, the driver namely Prakrati Kant Mishra had filed the claim petition, they are named as Radhavallabh Mishra and Suraj Bai. In the claim case, the appellants herein were proceeded ex-parte and the ex-parte award was passed on 25th of June, 2015, and an award of Rs.3,36,000/- was passed. Subsequently, to set aside the award, an application under Order 9 Rule 13 CPC was filed by the appellants herein claiming themselves to be the driver and the owner of the offending vehicle. The said application under Order 9 Rule 13 CPC was dismissed by order dated 16.12.2016. Hence the instant appeal.
3. Learned counsel for the appellants submits that without proper service of notice, the ex-parte order was passed, therefore, the appellants may be given a chance to represent their case before the claims tribunal on merits.
4. Perusal of the order dismissing the application under Order 9 Rule 13 CPC shows that the Court observed that the addresses given in the claim petition and the application filed under Order 9 Rule 13 CPC were same as such it was presumed that notices were issued on the proper address. The order further

records that the registered notice issued to the appellants came back with the endorsement that no such person of such name resides i.e. the appellants herein. Further perusal of the application filed under Order 9 Rule 13 CPC would show that 4 to 5 times ordinary and registered post notices were issued, subsequently, an application under Order 5 Rule 20 CPC was filed to get the respondents served through publication. The Court thereafter allowed the application filed under Order 5 Rule 20 CPC and the case was fixed for 17.01.2014 for publication report. In the meanwhile, the Court was transferred and case traveled to different dates and eventually on 05.08.2014 the publication report was filed with the Court. Based on such publication report since the appellants did not appear, the ex-parte proceedings were drawn against the appellants and ex-parte award was passed on 25.06.2015.

5. It is contended till date no single penny is paid to the claimants. The perusal of the award would show that the accident occurred on 05.09.2011 and admittedly for one reason or the other, the claimants who are the senior elderly persons i.e. the mother & father of the deceased are running from pillar to post and still after 7 years of the accident till date the awarded money is still to be recovered. At the same time the order rejecting the application under Order 9 Rule 13 CPC appears that it is cryptic and virtually no reasons have been assigned in the order as against the pleading made in the application under Order 9 Rule 13 CPC. Reading of the contents of the application moved under Order 9 Rule 13 CPC prima facie it appears and reflects that there has been several dates passed before the court as on some occasion the Tribunal was on leave when

the publication report was filed, but on that date ex-parte proceedings were not drawn but was drawn on the subsequent date. These facts however have not been dealt with in the order and unfortunately the same is not reflected in the order dismissing the application under Order 9 Rule 13 CPC. Therefore, in the interest of justice, to provide one opportunity on merits to the appellants, the application filed under Order 9 Rule 13 CPC is allowed and thereby the order dated 16.12.2016 passed in MJC No.1/16 is set aside subject to payment of Rs.7500/- a cost to be paid to the claimants. Furthermore taking into the age of the claimants, that they are the senior elderly people and have lost their son in an accident in the year 2011 and still are running from pillar to post, this Court in exercise of power conferred under Section 140 of the Motor Vehicle Act as no fault liability directs that amount of Rs.50,000/- would be payable to the claimants forthwith within a period of 45 days from today. It is further directed that the claims tribunal shall be further obliged to decide the case within a further period of 6 months from the date of receipt of this order by following the principles laid down by the Supreme Court in recent years. The parties shall appear before the Tribunal on 10th of October, 2018. If need be legal aid be provided to the claimants and information of this order be communicated to them in Devnagari language.

6. With such observation, the appeal stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu