

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 85 of 2016

1. Rukhmani Bai W/o Budharu Ram Nishad, Aged About 42 Years R/o Village And P.O. Samoda, Thana Aarang, District Raipur, Chhattisgarh.
2. Budharu Ram S/o Tirath Ram Nishad, Aged About 45 Years R/o Village And P.O. Samoda, Thana Aarang, District Raipur, Chhattisgarh.
3. Ku. Santoshi D/o Budharu Ram Nishad, Aged About 16 Years Represented Through Natural Guardian Appellant No.1, Rukhmani Bai, R/o Village & P.O. Samoda, Thana Aarang, District Raipur, Chhattisgarh.
4. Esht Kumar S/o Budharu Ram Nishad, Aged About 14 Years Represented Through Natural Guardian Appellant No.1, Rukhmani Bai, R/o Village And P.O. Samoda, Thana Aarang, District Raipur, Chhattisgarh.
5. Tirath Ram S/o Late Bhagela Nishad, Aged About 70 Years R/o Village And P.O. Samoda, Thana Aarang, District Raipur, Chhattisgarh**Claimants.** **--- Appellants**

Versus

1. Bodhi Ram S/o Dukaloram Sahu, R/o Village & P.O. Samoda, Thana Aarang, District Raipur, ChhattisgarhNon Applicant No.1/ Owner Of Tractor No. C.G.04/ D A 8932 And Trolly No. C.G.04 D A 8933, Chhattisgarh
2. The New India Insurance Company Limited through Regional Manager Division No.1 the New India Insurance Company Divisional Life Insurance Office, Pandri, Raipur Behind, District Raipur, ChhattisgarhNon Applicant No.3/ Insurer of Tractor No. C.G.04/ D A 8932 And Trolley No. C.G.04 D A 8933, District : Raipur, Chhattisgarh **--- Respondents**

For the Appellant	:	Mr. Arvind Shrivastava, Advocate
For Respondent No.1	:	Mr. Dev Ashish Biswas, Advocate
For Respondent No. 2	:	Mr. N.K. Malviya, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

26.11.2018

1. The instant appeal is against the order dated 14.07.2016 passed by the 1st Additional Motor Accident Claims Tribunal,

Raipur whereby the application filed under Order 9 Rule 9 of CPC to restore the Claim Case No.435/2014 was dismissed.

2. A perusal of the impugned order shows that the appellant has filed claim application under the Motor Vehicles Act which was pending trial before the Court below and on 07.08.2015 the same was dismissed. Subsequently the application was filed to restore the claim case under Order 9 Rule 9 of CPC wherein it was stated that some bereavement took place in the house of Mr. P.L. Verma, counsel who was representing the claimants, therefore, he had gone to his native place and the application was supported by the affidavit of Mr. P.L. Verma, Advocate. Subsequently when the restoration was prayed, the trial Court dismissed the application on the ground that the case was pending between 21.07.2015 and 07.08.2015 and on the date of hearing, one Dewangan Advocate appeared. The order sheet also reflects that Dilip Dewangan appeared at different points of time and the Power which has been filed shows the name of Dilip Dewangan in the Vakalatnama along-with the names of other counsels therein. Consequently the Court dismissed the application on the ground that no plausible reason was given for non-appearance.
3. A perusal of the order shows that while dismissing the application the Court has traversed the merit of the case about the maintainability. The reasons assigned in the application for restoration appears to be genuine as the non-appearance of counsel was because of bereavement in the family of Advocate, therefore, he could not appear.
4. Further more, the mechanical dismissal cannot be followed

as it always varies with the nature of the case. This fact cannot be ignored that the claim petition was filed by the legal heirs of the deceased, consequently, in such a case the dismissal in ordinary course should have been considered with different yard-stick. Further more, the reason which has been assigned appears to be genuine and cannot be thrown by taking stringent view.

5. In the result, the order dated 14.07.2016 is set aside. The Claim Case No.435/2014 is restored to its original number. After restoration of the case, the parties shall appear before the Claims Tribunal on 23.01.2019 and the Tribunal shall be obliged to decide the claim case within a further period of six months. Further it is made clear that any observation made in the impugned order dated 14.07.2016 rejecting the application under Order 9 Rule CPC shall not effect the merits of the case.
6. With the above observation/direction, this appeal stands disposed of.

**Sd/-
GOUTAM BHADURI
JUDGE**