

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No. 16 of 2019**

1. Ratilo Bai, Wd/o- Late Tulsi Das, Aged about- 25 years
2. Ku. Sunita, D/o- Late Tulsi Das, Aged about- 10 years
3. Ku. Ravina, D/o- Late Tulsi Das, Aged about- 5 years
4. Ku. Raliyo Bai, D/o- Late Tulsi Das, Aged about- 10 years

Applicants No. 2 to 4 are minors Through their natural guardian mother namely Ratilo Bai Wd/d.- Late Tulsi Das, Aged about- 25 years

5. Smt. Sukhbatiya Bai, W/o- Late Premdas, Aged about- 60 years
Premdas, S/o- goverdhan Das(Since Died)

All above are R/o- Village Ghutrapara, Gram Panchayat Vandna, Police Station & Tahsil- Sitapur, District- Surguja (C.G.)

---- Appellants

Versus

1. Anil Yadav, Aged about- 45 years, R/o- Village Chipkaya, Police Station & Tahsil- Batauli, District- Surguja (C.G.)
2. Shivkumar Yadav, S/o- Murli Yadav, Aged about- 35 years, R/o- Village Kuniya, Police Station Kamleshwarapur, Tahsil- Maipat, District - Surguja (C.G.)

---- Respondents

For Appellants : Mr. Bharat Sharma, Advocate

For Respondents : Mr. Jitendra Shrivastava, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

26/08/2019

1. This Miscellaneous Appeal is preferred against the order dated 10th December, 2018 passed by First Additional Motor Accident Claims Tribunal Ambikapur, District- Sarguja (C.G.) in Miscellaneous Civil Suit No. 77/2017, whereby the application preferred by the appellant under Order 9 Rule 9 for restoration of Motor Accident Claim No. 50 of 2014 is dismissed for want of prosecution.
2. The application under Section-166 of the Motor Vehicle Act, 1988 was filed for compensation on account of death of Tulsidas. The

application was filed before the Tribunal and said application was dismissed for want of prosecution on 14.7.2017. An application under Order 9 Rule 9 of the Code of Civil Procedure was filed for restoration of the said claim case on 30th August, 2017 but it was also dismissed as mentioned above.

3. Learned counsel on behalf of appellant submits that appellant could not communicate his counsel about the facts of the case that is why the case was dismissed for want of prosecution. The appellants are willing to contest the case on merits and they should not be deprived from contesting the case.
4. On the other hand, learned counsel for the respondents submits that it is the appellants who committed fault for non appearance during conduction of the case and even he was not appeared when the case was called in restoration of the petition. Therefore, it is not the case where opportunity should be provided to the appellants.
5. After having heard both sides, this Court is of the view that the appellants should be provided opportunity of hearing in the claim case as the matter is not decided on merits and same is dismissed on default. If the appellants are ready to contest the case, one opportunity should be provided to them to submit their case before the Tribunal for deciding the issues between the parties in accordance with law.
6. Accordingly, the appeal is allowed. The Motor Accident Claim Case 50/2014 pending between the parties is ordered to be restored and shall be disposed of according to the law by the First

Additional Motor Accident Claims Tribunal Ambikapur, Sarguja
(C.G.)

7. Both the parties are directed to appear before the said Court for further proceedings on 1st October, 2019.

Sd/-

(Ram Prasanna Sharma)
Judge

N.Mohle