

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 153 of 2018**

1. Smt. Meera Bai Nag, W/o Motilal Nag, aged about 47 years,
2. Motilal Nag, S/o Late Shri Ratiram Nag, aged about 50 years,
3. Ku. Devki, D/o Motilal Nag, aged about 27 years,

All resident of Village – Post Kohkameta, Tah. Keshkal, Distt. Kondagaon (C.G.)

----Petitioners

Versus

1. Manoj Kumar Sinha, S/o Shru Sudhu Sinha, aged about 25 years, R/o Indra Colony, Tongpal, Tah. Chhindgarh, Distt – Sukma (C.G.)

(Vehicle Commander No. C.G. 04 V. 3688 driver)

2. Smt. Urmila Khobragade, W/o Mannu Ram Khobragade, R/o Durga Mandir Chowk, Tongpal, Tah. Chhindgarh, Distt. Sukma

(Vehicle Commander No. C.G. 04 V. 3688 registered owner)

3. The Oriental Insurance Company Ltd., Through : Divisional Office, Divisional Manager, R/o Laxman Complex, Medical College Road, Jagdalpur, Distt. Bastar (C.G.)

---- Respondents

For Petitioners	:	Mr. Kanwal Singh Baghel, Advocate.
For Respondent No. 3/Insurance Company	:	Mr. Sandeep Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/01/2019

(1) The claimants, who are unfortunate mother, father and sister of deceased Deepak Kumar Nag, filed a claim petition for his death in the motor accident occurred on 11.08.2012, which was put to trial and ultimately on 26.07.2016 for non-compliance of the order dated 31/03/2016 claim petition was dismissed in default vide order dated 26.07.2016. Thereafter, the claimants filed an application under Order 9 Rule 9 of the Code of Civil Procedure

(for short “CPC”) for restoration of the claim petition, which was dismissed by the Claims Tribunal in default by the impugned order against which instant writ petition has been preferred.

(2) I have heard learned counsel appearing for the parties and perused the impugned order.

(3) Admittedly, in the claim petition issues have already been framed and thereafter the claim petition has been dismissed for non-impleadment of the registered owner by order dated 26.07.2016 and, thereafter, application for restoration of claim petition was also dismissed vide order impugned.

(4) This Court in the matter of **Fulkunwar Bargaah & others Vs. Suresh Kumar Sahoo & others**¹ has framed following question for determination :-

“The Principal question involved in this appeal is whether Claims Tribunal has jurisdiction to dismiss the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 for default after settlement of the issues ?

And ultimately held as under:-

13. Thus, regard being had to the aforesaid principle laid down by the Supreme Court, in the instant case, the cause shown by the appellants/claimants for non-appearance remained uncontroverted, the Claims Tribunal ought to have restored the claim petition to its original file as the Claims Tribunal has no jurisdiction to dismiss the claim petition, after settlement of the issues and thus, the Claims Tribunal has committed illegality in dismissing the claim petition in default and further committed illegality in not restoring the claim petition as the sufficient cause has been shown by the appellants/claimants.”

(5) In view of above legal position, the Claims Tribunal has no jurisdiction to dismiss the claim petition for want of prosecution after framing settlement of the issues. Admittedly, as

¹ M.A. (C) No.871 / 2013, decided on 27.09.2013

the issues have already been framed, the Claims Tribunal ought to have decided the claim petition on merits and could not have resorted to dismiss the claim petition in default for non-compliance of order.

(6) Accordingly, the order passed by the Claims Tribunal dismissing the claim petition in default as well as impugned order dated 25.11.2017 rejecting the application for restoration of claim case is hereby set-aside. Claim Case No. 166/2012 is restored to its original number for hearing and disposal in accordance with law. The Concerned Claims Tribunal is directed to decide the claim petition expeditiously preferably within a period of three months from the date of receipt of certified copy of this order and inform to the Registry of this Court that the Claim Petition has been finally decided on merits.

(7) The writ petition is allowed to the extent indicated hereinabove.

(8) Copy of this order be sent to the concerned Motor Accidents Claims Tribunal for compliance and needful.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

