

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 862 of 2019

Chetan, S/o. Videsh Verma, Aged About 22 Years, R/o. Village Devpura,
Tahsil Chhuikhadan, District Rajnandgaon Chhattisgarh

---- Petitioner

Versus

1. Kanhai, S/o. Ramdas Satnami, Aged About 44 Years, R/o. Navagaon,
Tahsil Chhuikhadan, District Rajnandgaon Chhattisgarh.
2. Santosh, S/o. Shyam Singh Marar, Aged About 27 Years, R/o.
Salhewara, Tahsil Chhuikhadan, District Rajnandgaon Chhattisgarh
3. National Insurance Company Limited, Brancha Office, Kamthi Line,
Kankariya Bhavan, Rajnandgaon District Rajnandgaon Chhattisgarh

-----Respondents

For Petitioner : Mr. Hemant Kesharwani, Advocate

For Respondent No.3 : Mr. P.K. Tulsyan, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

07/02/2020

1. This petition has been brought under Article 227 of the Constitution of India being aggrieved by the order dated 11.09.2019, passed by the learned Additional Motor Accident Claims Tribunal, Khairagarh, District – Rajnandgaon in Claim Case No.2/2018, by dismissing the application filed by the petitioner under Order 9 Rule 13 of C.P.C.
2. It is submitted by the counsel for the petitioner that the impugned order has been passed by the learned Additional Motor Accident Claims Tribunal without making any enquiry, which was

necessary in that case to provide such opportunity to the petitioner to establish that there had been sufficient reason because of which, he could not give his appearance before the Court.

3. Reliance has been placed on the judgment of High Court of Madhya Pradesh in case of **Babulal Ramcharan & Ors. Vs. Chhotekhan Lal Khan** reported in **1976 MPLJ 843**, in which there is direction given by the Madhya Pradesh High Court to record evidence of the parties before deciding the petition under Order 9 Rule 13 of C.P.C.. Therefore, it is prayed that the impugned order be set-aside.
4. Counsel for the respondent No.3 opposes the petition and the submission made in this respect. It is submitted that the grounds mentioned in the application itself are very clear that after engaging the counsel, the petitioner did not make any enquiry from the said counsel, which shows his gross negligence, therefore, there is no need for making any enquiry in this case and the learned M.A.C.T. has very clearly observed in the impugned order in this respect. Therefore, there is no error committed in passing the impugned order.
5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. After considering on the submissions made by the learned counsels from both the sides, it is found that the learned M.A.C.T. has not given opportunity to the petitioner for producing evidence

in support of the grounds mentioned in the application under Order 9 Rule 13 of C.P.C.. The provision under Order 9 Rule 13 C.P.C. does not speak of any procedure, but the mode in which the Court shall feels satisfied has to be understood and this can be only by way of bringing the evidence in support of the statement in the application and if there is no specific procedure then the Court can resort to the provision under Section 151 of C.P.C. as well. Apart from that it is a continuing practice that normally the parties are allowed to adduce evidence on the application under Order 9 Rule 13 of C.P.C., therefore, because of this technical reason, I am of this view that the petition deserves to be allowed and it is hereby allowed. The impugned order dated 11.09.2019 is set-aside and the proceeding before the Court on the application filed under Order 9 Rule 13 of C.P.C. is restored. The parties are directed to give their appearance before the Court on 16.03.2020 and the learned trial Court is directed to afford proper opportunity to the parties to lead evidence in support of their claim and decide the the application on merits.

7. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge