

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 1074 of 2018

Harishankar @ Lalta Dubey, S/o. Sahadev Dubey, Aged About 62 Years, R/o. Village - Bafana, P.S. and Tahsil - Odgi, District - Surajpur Chhattisgarh.

---- Petitioner

Versus

1. Manmet, Wd/o. Tirath Prasad Yadav, aged about 40 years,
 2. Chandrakant, S/o. Late Tirath Prasad Yadav, aged about 14 years, Minor through guardian her mother Manmet, respondent No.1.
- Both are R/o. Village - Inderpur, P.S. and Tahsil - Odgi, District - Surajpur, Chhattisgarh.

-----Respondents

For Petitioner	: Mr. A.K. Prasad, Advocate
For Respondents	: Mr. Dashrath Kushwaha, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

10/02/2020

1. Challenge in this petition is to the order dated 15.09.2017, passed in CNR No. CGSJ0100060522016, by the the 3rd Additional Motor Accident Claims Tribunal, Surajpur, District – Surajpur (C.G.), by which the application filed by the petitioner under Order 9 Rule 13 C.P.C. has been dismissed by the learned Motor Accident Claims Tribunal.
2. It is submitted by the learned counsel for the petitioner that a Claim Case No.96/2011 was filed against the petitioner by the respondents. The petitioner was never served with any notice in that claim case and the same has been proceeded ex-parte and award has been granted in favour of the respondents. The

petitioner came to know of the award, when he received the notice of final award it was only then he came to know about the claim case against him, therefore, he immediately filed an application for setting aside the ex-parte award, which has been arbitrarily and erroneously rejected by the learned Motor Accident Claims Tribunal.

3. It is submitted that on perusal of the record of the proceeding reveals that no opportunity was given to the petitioner for leading evidence in support of his statement, which he has made in the application. Reliance has been placed on the judgment of Madhya Pradesh High Court in ***M/s. Mahalaxmi Traders & Another Vs. Sudarshan Industries***, reported in ***2007 (2) M.P.H.T. 455***, in which it was held that for deciding the application under Order 9 Rule 13 of C.P.C., enquiry was essential to be made before passing any order. Therefore, it is prayed that this petition be allowed and relief be granted to the petitioner.
4. Counsel for the respondents opposes the petition and the submissions made in this respect. It is submitted that no error has been committed by the Court below. The petitioner had ample opportunity to appear before the learned Motor Accident Claims Tribunal to defend himself, which he has chosen not to do so and after passing the award, he moved an application under Order 9 Rule 13 in order to protract the trial. Hence, it is prayed that this petition be dismissed.

5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. The record of the civil M.J.C. No.10/2016 is present before this Court and on perusal of the same, it is found that after filing of the application under Order 9 Rule 13 C.P.C., the learned M.A.C.T. directed for calling of the record of the claim case from the record room and the record was received. Both the parties were directly heard on the application and the impugned order was passed. It is clearly demonstrated that no opportunity was given to the petitioner to bring evidence in support of his claim, that means no enquiry was made.
7. The wording in this provision under Order 9 Rule 13 C.P.C., itself speaks that the person applying has to satisfy the Court that he was not served with summons with respect to the case, or that he was unable to appear before the Court because of sufficient reason. The satisfaction of the Court can not be arrived at only on the basis of the oral submission made by the parties, it has to be established on the basis of the evidence of facts and for that an enquiry becomes necessary. There is no clear procedure laid down for proceeding for setting aside the ex-parte order, however, in such case, where the Code and the concerned Act are silent, the Court has jurisdiction under Section 151 of C.P.C. to enquire into the matter and decide the application according to the merits.

8. This is what is meant in Para-10 of the judgment in case of **M/s. Mahalaxmi Traders (Supra)**, therefore, I feel inclined to allow this petition at motion stage.
9. Accordingly, the petition is allowed. The impugned order dated 15.09.2017, passed in CNR No. CGSJ0100060522016, by the the 3rd Additional Motor Accident Claims Tribunal, Surajpur, District – Surajpur (C.G.) is hereby set-aside and the proceeding before the claims tribunal 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 claims Tribunal on 02/03/2020 and the learned claims tribunal is directed to afford proper opportunity to the parties to lead evidence in support of their claim and decide the the application on merits within a period of two months.

Sd/-
(Rajendra Chandra Singh Samant)
Judge