

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 824 of 2019

The Divisional Manager, The Oriental Insurance Company Limited, Branch Office-Rama Trade Centre, First Floor, Near (Old) Bus Stand, Rajiv Plaza, Bilaspur, District Bilaspur, Through Its T.P. Hub In-Charge Chhattisgarh 495001.

---- Petitioner

Versus

1. Suhavan Singh, S/o. Chunni Singh, aged about 45 years, Caste Gond, Occupation-Agriculture,
2. Patango Bai, W/o. Suhavan Singh, aged about 42 years, Occupation House Wife,
3. Sangeeta Singh, D/o. Suhavan Singh, aged about 16 years, Student,
4. Abhimanyu Singh, S/o. Suhavan Singh, aged about 14 years, Student,
5. Abhisek Singh, S/o. Suhavan Singh, aged about 12 years, Student.

The respondents No.3 to 5 are minors and they are represented through their father and natural guardian Shri Suhavan Singh, S/o. Chunnilal (@ Chunni Singh) Caste Gond,

All are R/o. Village Amarpur, Talwapara, Post Mansukh, P.S. and Tehsil Baikunthpur, District Koriya Chhattisgarh. (Claimants)

6. Intzar Khan, S/o. Bhikhu Khan, aged about 55 years, Occupation Driving and Vehicle Owner. R/o. Ward No. 15 Khandoba Baba Mandir, Ratanpur, District Bilaspur Chhattisgarh (Owner-cum Driver)

---- Respondents

For Petitioner : Mr. R.N. Pusty, Advocate

For Respondents : None present.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

20/07/2021

1. This petition has been brought being aggrieved by the order dated 18.10.2019 and 20.09.2019, passed by the learned Motor

Accidents Claims Tribunal, Baikunthpur, District – Koriya (C.G.) in Claim Case No. 62 of 2019.

2. It is submitted by the learned counsel for the petitioner that the petitioner is non-applicant No.2 in the claim case No.62 of 2019, pending before the learned Motor Accidents Claims Tribunal, Koriya. The learned Motor Accidents Claims Tribunal ordered for issuance of notice on 26.08.2019 and the case was fixed for 20.09.2019. The order sheet of the 20.09.2019 mentions that the respondents were not served with notice but on the basis of the tracking report web copy filed by the applicant's counsel regarding service of notice on the petitioner and the other respondents, the order was passed for proceeding ex-parte against the petitioners and other respondents.
3. Counsel for the petitioner gave appearance before the tribunal on the next date fixed i.e. 18.10.2019 and filed an application under Order 9 Rule 7 of C.P.C. praying to set-aside the ex-parte proceeding against him but that application was rejected. The tribunal proceeded to hear the evidence ex-parte and then fixed the case for award. After filing of this petition, proceeding of the tribunal has been stayed by this Court vide order dated 13.11.2019.
4. It is submitted by the learned counsel for the petitioner that the impugned order is illegal and arbitrary. The learned tribunal should have given opportunity to the petitioner to file his written statement and also to contest the claim case of the respondents. Reliance has been placed on the judgment of Delhi High Court in case of

Premnath Monga Foods & Beverages Pvt. Ltd Vs. Jainco Industries & Ors. reported in **63 (1996) DLT 102** and the judgment of M.P. High Court in case of **Ramhet & Ors. Vs. Ajaypal Singh & Ors.**, reported in 2003 (1) MPLJ 2015.

5. There is no representation from the respondents No.1 to 6.
6. I have heard the learned counsel for the parties and perused the documents placed on record.
7. On perusal of the impugned order and the copy of the order sheets that has been filed, it is found in the order sheet dated 20.09.2019, that the learned Court has mentioned that respondents were not served, however on production of web copies of the tracking report by the applicant's counsel, the same was taken into consideration without making any verification of the same in a casual manner. The learned tribunal has ordered for proceeding ex-parte against the respondents. On 18.10.2019, the petitioner's counsel was present and he was praying for setting-aside the ex-parte proceeding in application under Order 9 Rule 7 of C.P.C.. The impugned order dated 18.10.2019 shows that the application has been rejected without any application of mind and without giving any reason for the same. Till that date the evidence of the applicant's side was not recorded, therefore, the proceeding in the claim case was at a very initial stage.
8. Order 9 Rule 7 of C.P.C. provides that if on the date adjourned for hearing, the defendant appear and assigns good cause for his previous non-appearance, then the Court upon such terms as may be directed with respect to cost or otherwise, grant

opportunity of hearing to the defendants.

9. Section 169 of the Motor Vehicle Act, 1988 empowers the claims tribunal with the powers of civil Court, therefore, in this case, it appears that the learned tribunal has not exercised the power under Section 169 of the Act Motor Vehicle Act, 1988 judiciously. It was required to be taken into consideration, that the petitioner had given appearance on the date, when the case was adjourned for hearing and before that no hearing had taken place. Further the order of ex-parte proceeding was also made on the basis of unverified web report produced by the applicant's counsel. Hence, the petitioner had good and sufficient cause both on the basis of which he should have been granted relief.
10. Hence, I am of this view that the learned tribunal has failed to exercise the jurisdiction vested in it and pass the erroneous order, which is liable to be set-aside. The petition is allowed. The impugned order dated 18.10.2019 and 20.09.2019, passed by the learned Motor Accidents Claims Tribunal, Baikunthpur, District – Koriya (C.G.) in Claim Case No. 62 of 2019 are set-aside. The learned tribunal is directed to afford opportunity to the petitioner for filing reply to the claim petition and also allow the petitioner to participate in the proceedings. If some default is committed by the petitioner in future, then the learned tribunal shall have the authority to pass appropriate order.
11. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge