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**(1986) 10 OHC CK 0035**  
**In the Orissa High Court**  
**Case No : Misc. Appeal No. 489 of 1982**

Budhi Sahoo and Others

APPELLANT

Vs

Nilamani Paschimakabat and Others

RESPONDENT

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**Date of Decision :** 12-10-1986

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 110A

**Citation :** (1987) 1 ACC 95 : (1986) 2 OLR 657

**Hon'ble Judges :** S.C. Mohapatra, J

**Bench :** Single Bench

**Advocate :** B.P. Tripathi, for the Appellant; G.P. Mohant and B.N. Prasad (R.1), S.P. Misra, D. Das and A. Latif (R. 2) and S.S. Basu and S.S. Rao (R. 3), for the Respondent

**Final Decision :** Allowed

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## Judgement

S.C. Mohapatra, J.—Claimants are the appellants in this appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act").

2. The claim case was fixed to 2-8-1982 for hearing. Case of the claimants is that they could not receive the letter of their Advocate intimating the date fixed and accordingly they could not take part in the hearing. The application had been dismissed on the ground that there was no material in support of the claim.

3. Normally in absence of materials, the appellate Court has no scope for interference against the order. The scope for getting a chance to furnish materials before the Tribunal after dismissal of the claim petition for absence of the claimant on the date of hearing even for sufficient cause has been sealed in the decision of this Court reported in ILR (1981) 1 Cutt. 474 : (Suresh Kumar Moharana and Ors. v. Brundaban Barik and Anr. ). However, technicality should not stand on the way of proper adjudication of a manner. Taking into consideration the benevolent object of Section 110-A of the Act, I held in 1984 (I) OLR 951, 58 (1984) CLT 468 (Smt. Nishamani Swain and Ors. v. Meheswar

Sahu and Ors.) that the appellate Court can consider the cause of the claimants' inability to take part in the proceeding to furnish materials for proper adjudication of the claim. When reasonable circumstance has been pointed out which is not disputed for which the claimants could not take part in a proceeding to adduce evidence, the Court is to extend its helping hand to the claimant to give a chance to him.

4. In the present case, the claimants have pleaded that their inability to receive the intimation of the date of hearing was the cause of their failure to participate in the proceeding. No challenge has been made by filing objection to such assertions. This is a sufficient cause since the appellants cannot be attributed with any misconduct. Accordingly, they should get a chance to give their evidence.

5. In the result, the appeal is allowed and the impugned order is set aside. The parties are directed to appear before the Tribunal on 24-11-1986 on which date the Tribunal shall proceed with the enquiry in accordance with law. There shall be no order for costs.