

(1988) 11 OHC CK 0016

In the Orissa High Court

Durga Devi Mishra and Others

APPELLANT

Vs

Orissa State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 01-11-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9

Citation : (1989) 2 ACC 471 : (1989) 67 CLT 184

Hon'ble Judges : H.L. Agrawal, C.J.; P.C. Misra, J

Bench : Division Bench

Judgement

H.L. Agrawal, C.J.—The question that arises for consideration in this appeal is as to whether the Motor Accidents Claims Tribunal acting under the provisions of the Motor Vehicles Act has got the authority to entertain an application for restoring a claim case which happened to be dismissed for default.

2. In the case in hand, the claim case, which was instituted by the appellants, was dismissed for default and subsequently restored on an application being filed. Thereafter, the contesting respondent filed written statement and issues were settled. But, when the case was taken up for hearing, a point was raised by the respondents that the order of restoration of the claim case was without jurisdiction in view of the decision of this Court in Smt. Nishemani Swain and Others Vs. Maheswar Sahu and Others, .

3. When this case was taken up for hearing before G.B. Patnaik, J. on 17-3-1986, he having entertained some doubt regarding the correctness of the aforesaid decision in view of the Rules framed by the State Government, namely, the Orissa Motor Vehicles (Accidents claims Tribunals) Rules, 1960 (for short "the Rules"), referred the matter to a Division Bench.

4. Smt. Nishemani Swain and Others Vs. Maheswar Sahu and Others, has held that the Tribunal has no jurisdiction to entertain an application under Order IX, Rule 9 of the Code of Civil Procedure. It appears that the attention of the learned Judge was not invited to Rule 20 of the Rules, which we would do better to

extract here under:

The following provisions of the first Schedule to the Code of Civil Procedure, 1908, shall so far as may be, apply to proceedings before the claims. Tribunals, namely, Order V, Rules 9 to 13 and 15 to 30; Order IX, Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII and Order XXIII, rules 1 to 3.

5. It is, therefore obvious that the provisions of Order IX of the CPC have been expressly made applicable to the proceedings before the claims Tribunals in the State of Orissa. In that view of the matter, the restoration of the claim case by the Tribunal was perfectly within its jurisdiction and it must be held that Smt. Nishemani Swain and Others Vs. Maheswar Sahu and Others, has not been correctly decided by the learned single Judge, Learned Counsel appearing for the respondents also could not support the said decision in view of the specific provisions in the aforesaid Rules making Order IX of the CPC applicable to proceedings before the Accidents claims Tribunals. The appeal, therefore, must be allowed and the impugned order passed by the Tribunal set aside.

6. In the result, the appeal is allowed and the impugned order is set aside. The matter is remanded to the claims Tribunal for deciding the claim case in question on merits. In the circumstances, we make no order as to costs.