(2014) 04 OHC CK 0011

In the Orissa High Court

Case No : M.A. No. 205 of 1994

Gajendra APPELLANT

Vs

National Insurance Company RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2014) 04 OHC CK 0011

Hon'ble Judges : Raghubir Dash, J

Bench : Single Bench

Judgement

Raghubir Dash, J.—This appeal is against the order dated 11.01.1994 passed by the learned III M.A.C.T., Balasore in Misc. Case No. 2 of 1992 rejecting the petition under Order-9, Rule-13, C.P.C. to set aside the award passed in Misc. Case No. 127/126(C) of 1988/82.

2. The present Appellant is the owner of the offending vehicle against whom the award in Misc. Case No. 127/126(C) of 1988/82 was passed ex parte. To have the ex parte award set aside, the present Appellant made an application under Order-9, Rule-13, C.P.C. taking the ground that due to his illness he was prevented from appearing before the learned III M.A.C.T., Balasore to take part in the proceeding relating to the accident claim case. In the proceeding under Order-9, Rule-13, C.P.C., the claimant did not appear but the Insurance Company, who had made a party to the accident claim case appeared and filed counter controverting the plea of illness. The present Appellant adduced evidence by examining himself as a witness. He exhibited one medical certificate to prove his illness during the relevant period. Learned Tribunal did not accept his evidence as reliable on the ground that the doctor, who had issued the certificate, was not brought to the witness box. That apart, in the certificate exhibited by the Appellant it was not specifically mentioned that the Appellant was under the treatment of the doctor who issued the certificate. Accordingly, the petition for setting aside the ex parte award was dismissed.

3. The impugned order is challenged on the ground that learned Tribunal ought to have accepted the unchallenged evidence on his illness during the relevant period and should have taken a liberal view to give a scope to the Appellant to contest the claim case.

4. In course of argument learned counsel for the Appellant submits that though the offending vehicle was covered under a valid policy issued by the Respondent No. 1-Insurance Company, because of the Appellant''s non-participation in the proceeding award has been passed against him directing him to pay the amount under award without any direction to the Insurance Company to indemnify the insured vehicle owner. A copy of the insurance certificate is produced before this Court. Learned counsel for the Respondent No. 1 fairly submits that the Insurance Company has no objection if the matter is remanded back to the learned Tribunal for disposal of the claim case afresh provided the Appellant should be directed to furnish the full particulars about the insurance certificate including the branch of the Insurance Company which has issued the certificate.

5. Having gone through the impugned order it is found that merely on the ground that the doctor, who had issued the certificate was not examined as a witness, the learned Tribunal should not have rejected the prayer under Order-9, Rule-13, C.P.C. The Appellant appears to have made out a case of sufficient cause that prevented him from appearing when the claim case was called on for hearing. On perusal of the impugned order it appears that the Appellant has adduced sufficient evidence to show that he was suffering from hypertension from 01.04.1989 to 12.09.1989 and was under rest during that period. Thus, he has established that there was sufficient cause for his none appearance when the claim case was called on for hearing.

6. Accordingly, the appeal is allowed and the impugned order is set aside. The petition under Order-9, Rule-13, C.P.C. is allowed. The impugned award passed in Misc. Case No. 127/126(C) of 1988/82 is set aside and the matter is remanded back to the learned Tribunal for fresh disposal giving opportunity to the Appellant to file counter to the claim petition and allowing the parties to adduce evidence in addition to the evidence already on record and dispose of the claim case within a period of six months from the date the Tribunal receives copy of this order. If an application is made by the Insurance Company before the learned Tribunal for a direction to the vehicle owner to provide further particulars about the policy certificate relied on by the vehicle owner, the same may be disposed of by the learned Tribunal in accordance with law.