

(1999) 03 MP CK 0035
In the Madhya Pradesh High Court
Case No : M.A. No. 418 of 1999

Sanjay Sharma and Others	Vs	APPELLANT
Lakhan Lal Yadav and Others		RESPONDENT

Date of Decision : 19-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2000) ACJ 1059

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : Dinesh Kaushal, for the Appellant;

Final Decision : Allowed

Judgement

S.C. Pandey, J.—This is an appeal u/s 173 of the Motor Vehicles Act, 1988 (henceforth "the Act"), against dismissal of the claim application, filed by the appellants, by the court below. Nobody appeared on behalf of the appellants and respondent Nos. 1 and 2 before the Claims Tribunal on the date fixed. Only the counsel for the respondent No. 3 was present. The Claims Tribunal appears to have dismissed the claim of the appellants on the ground that there is no averment regarding the negligence of the respondents. In view of the fact that Rule 240 of the Motor Vehicles Rules, 1994 (henceforth "the Rules") makes the provision of Order 9, Rule 9 of the CPC applicable to the proceeding before the Claims Tribunal, the Claims Tribunal was not authorised to decide the case on merits in absence of appellants or their counsel. Under such circumstances, the Claims Tribunal should have dismissed the application under Order 9, Rule 8 of the Code of Civil Procedure. Since the respondent Nos. 1 and 2 were not present at the time of passing of the order before the Claims Tribunal, it is not necessary to issue notice to them in this appeal. Respondent No. 3 could not support the dismissal on merits of the case and, therefore, it need not be served in this appeal. This court has power u/s 115 of the CPC suomotu to set aside a patently

illegal order even without notice to the opposite party when it feels that no useful purpose would be served by hearing them. Under these circumstances, this court does not issue notice to respondents and set aside the order of the Claims Tribunal dismissing the claim of the appellants on merits and remits it back to the Claims Tribunal. It is directed that a fresh notice will be issued by the Claims Tribunal-cum-Ist Additional District Judge, Seoni. The Claims Tribunal shall issue notice to the respondent No. 1 afresh on merits of the case. In case, it may be that the appellants may not have included all the ingredients of claim in an application before Claims Tribunal, the Claims Tribunal shall in the interests of justice provide an opportunity to the appellants to justify the claim and amend the pleadings, if necessary. The Claims Tribunal may before issuing notice, permit the appellants to amend the application u/s 166 of the Act in accordance with the provisions of the Act and the Rules.

2. Accordingly, the appeal succeeds and is allowed. No costs.