

(2010) 09 CHH CK 0018
In the Chhattisgarh High Court
Case No : Misc. Appeal No. 103 of 2004

Shanti Devi and Others

APPELLANT

Vs

Ashik Ahmad Kuraisi and Others

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1, Order 17 Rule 2, Order 17 Rule 3, Order 9 Rule 3

Citation : (2010) 5 MPHT 94 : (2011) 2 TAC 599

Hon'ble Judges : Prashant Kumar Mishra, J; I.M. Quddusi, J

Bench : Full Bench

Judgement

I.M. Quddusi, J.—This appeal has been filed by the claimants against the impugned award dated 29-11-2003 passed by First Addl. Motor Accident Claims Tribunal Surajpur, District Surguja (C.G.) in M.A.C.C. No. 45/2002 dismissing the claim of the Appellants.

2. The brief facts in a nutshell are that the Appellants filed claim case on the ground that on 15-2-1999 when Sitaram (deceased) was going to his house, a Commander Jeep bearing Regn. No. M.H. 31 -G/39735 which was being driven rashly and negligently by its driver Ashik Ahmad, has dashed Sitaram near Hanuman Mandir at Bishrampur Main Road. As a result of which, Sitaram sustained serious injuries on head, chest, waist and other vital parts. The deceased was admitted in different hospitals where he had undergone prolonged treatment but could not get relief from the injuries. However, after his discharge during convalescence the deceased himself filed a claim case against the Respondents but unfortunately during the pendency of the claim, Sitaram died on 12-2-2001 due to the gravity of injuries. Thereafter the legal representatives of the deceased were substituted in order to claim compensation on account of death of Sitaram. The learned Tribunal dismissed the claim on the ground that the applicants have not produced their witnesses in ambiguous circumstances; therefore, the applicants are not entitled to get compensation from the non-applicants.

3. We have heard learned Counsel for the parties and have also perused the records.

4. On certain occasions, opportunities were given to the claimants to adduce evidence, but the claimants and their witnesses remained absent and ultimately on 3-10-2003, the application filed on behalf of the Appellants for grant of time to produce evidence was rejected and the evidence of Appellants was closed. In the above circumstances, in our opinion the impugned award should not have been made as the Tribunal concerned ought to have followed the provisions of Rule 3(b) read with Rule 2 of Order 17 of the CPC and should have passed the orders in accordance with Order 9, Code of Civil Procedure.

5. In this regard, it is relevant to place reliance on decision of the Supreme Court in *Mohandas and Ors. v. Ghisia Bai and Ors.* AIR2002 SCW 2676, wherein on the date when the case was fixed for evidence, the Counsel for Plaintiff moved an application for a short adjournment which was rejected. Then again the Counsel for the Plaintiff moved an application under Order 17 Rule 1 of the CPC on the ground that the Plaintiff is seriously ill and therefore the case may be adjourned, the said application was also rejected. Thereafter the Trial Court dismissed the suit under Order 17 Rule 3 of the Code of Civil Procedure, against which an appeal was preferred and the case was remanded back by the Supreme Court holding that the order passed was not under Order 17 Rule 2 but was under Order 17 Rule 3 of Code of Civil Procedure. The Supreme Court in Paragraph 3 observed as under:

In the present case, what we find is neither the Plaintiff Appellant nor his witnesses were present on 7th May, 1994. Therefore, the case has to be dismissed under Order XVII Rule 2. Even Rule 3 itself provides that if the parties or any of them absent, the Court shall proceed to decide the suit under Order XVII, Rule 2. In view of the said legal position, we are of the view that the view taken by the Court below was erroneous and deserves to be set aside. We, therefore, set aside the judgment under appeal and sent the case back to the Trial Court to decide the matter in accordance with law.

6. In *Ashok Kumar v. Nagar Palik Nigam and Ors.* 2010 (2) CGLJ 354, this Court has also taken similar view.

7. In view of the above, the award made by the Tribunal is not sustainable in the eye of law. Therefore, we allow this appeal in part, set aside the impugned award and remit the matter back to the Tribunal for deciding the same afresh in accordance with law. The Lower Court Record shall be sent back forthwith. Needless to mention that the claim petition shall be decided as early as possible preferably within a period of 4 months.