

**Shivshankar and Others Vs. Sarjeet Singh and Others**

**Shivshankar and Others Vs. Sarjeet Singh and Others**

**SooperKanoon Citation :** [sooperkanoon.com/501775](http://sooperkanoon.com/501775)

**Court :** Madhya Pradesh

**Decided On :** Aug-30-2000

**Reported in :** 2001(1)MPHT449

**Judge :** Mr. Dipak Misra, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 and 110-B - Order 5, Rules 9 to 13 and 15 to 20 - Order 9, Rules 5, 9, 16, 17, 19 and 20 - Order 26, Rules 2 to 21 - Order 17, Rules 3 to 10, Order 43, Rule 1; [Motor Vehicles Act, 1988](#) - Sections 166; Madhya Pradesh Motor Vehicles Rules, 1994 - Rules 223, 224, 230, 231, 234, 234(1) and (4), 238 and 240; Orissa Motor Vehicles Rules, 1960; Orissa Motor Vehicle (Accidents Claims Tribunal) Rules, 1960

**Appeal No. :** Civil Revision No. 1397/2000

**Appellant :** Shivshankar and Others

**Respondent :** Sarjeet Singh and Others

**Advocate for Def. :** Shri Umesh Trivedi and ;Shri Sanjay Sharma, Adv.

**Advocate for Pet/Ap. :** Shri Sanjay K. Agrawal, Adv.

**Disposition :** Civil Revision allowed

**Judgement :**

ORDER

**Dipak Misra, J.**

1. Invoking the revisional jurisdiction of this Court under Section 115 of the Civil Procedure Code (in short 'the Code') the petitioners-claimants have called in question defensibility of the order dated 9-5-2000 passed in MJC No. 14/99 by the learned VIIth Additional District Judge, Bilaspur.

2. The fact as have been unfolded are that the petitioners as claimants filed an application under Section 166 of the [Motor Vehicles Act, 1988](#) (hereinafter referred to as 'the Act') forming the subject-matter of Claim Case No. 44/98. The aforesaid claim case was posted on 5-7-1997 for adducing evidence. As on that date the claimants failed to appear, the Tribunal dismissed the application. Thereafter, the petitioner filed an application under Order 9 Rule 9 of the Code for restoration of the claim case. It was put forth in the application that the claimant No. 1, Shivshankar was suffering from diarrhoea and fever. He filed an affidavit in support of his application. The Tribunal took exception to the fact that no medical certificate was produced and there were other claimants who could have instructed their counsel to take appropriate steps. Accordingly, the Tribunal came to hold that there was no justification to restore the application. Being of this view the Tribunal rejected the application by the impugned order. The said order is the cause of grievance of the present revisionists.

3. I have heard Mr. Sanjay K. Agrawal, learned counsel for the applicants and Mr. Umesh Trivedi, learned counsel for the non-applicants. In spite of valid service of notice there has been no appearance by the non-applicant No. 3/insurer.

4. Mr. Trivedi has raised a preliminary objection that as the applicants preferred an application under Order 9 Rule 9 of the Code they are required to file an appeal under Order 43 Rule 1 (c) of the Code and hence, this civil revision is not maintainable.

Mr. Agrawal replying to the aforesaid stand has contended that if an application to set aside an order of dismissal is rejected then an appeal does not lie but a revision lies. In support of his contention he has placed reliance on the decision rendered in the case of Ramshiromani Mishra v. Shiv Mohan Singh and another,

AIR 1997 MP 202, wherein it has been held that if an application is made for setting aside an ex parte award and the same is rejected a revision before the High Court is maintainable. I am in respectful agreement with the ratio laid down in the aforesaid case and hence, the preliminary objection raised by Mr. Trivedi is overruled.

5. It is next contended by Mr, Agrawal that as the case was posted for evidence after framing of issues the Tribunal should not have dismissed the case in default. In support of his submission he has relied on a Division Bench decision of Orissa High Court rendered in the case of Bhagban Mallik v. Nagendra Biswal and another, 1997 (1) TAC 73 (Ori.) wherein the Division Bench scrutinising the Orissa Motor Vehicles Rules, 1960 held as under :--

'..... by incorporation of Rule 20, Order IX has been made applicable. The said rule has to be read in harmony with other Rules. Rule 5 confers express power on the Tribunal to dismiss an application in a summary manner. As already indicated earlier Rule 16 deals with framing of issues. Rule 17 provides that after framing the issues the Claims Tribunal shall proceed to record evidence thereon which each party may desire to adduce. As envisaged under Rule 19 the Claims Tribunal in passing the order shall record concisely in a judgment the findings on each of the issues framed and the reasons for such finding and make an award, justifying the amount of the compensation to be paid by the insurer and also the person or persons to whom compensation shall be paid. If an application is not summarily dismissed it continues to reach its logical end, the logical end is as provided for under Rule 19 of the Rules. That apart, Section 166 (old Section 110-B) casts a mandate on the Tribunal to pass an award determining the amount of compensation. Reading the Rules in juxtaposition of Section 166 of 1988 Act (110-B of old Act) it is beamingly clear that the Tribunal has no jurisdiction to dismiss a claim petition for default after issues have been framed. But, if an award has been passed, the same can be set aside taking resort to Order IX of the Code. We may hasten to add that in the Motor Vehicles Act the Tribunal has been created so that the parties can seek adjudication of their grievances and claim compensation for tortious act, technical fetters and procedural obstacles are not to be emphasized by the Tribunal. Because of this purpose under Section 166 of the Act it has been

mandated that the Tribunal should conduct an inquiry which in our view, also would include an inquiry in respect of a claim of an absentee claimant. The Tribunal in all cases need not pass a Nil award. On perusal of the documents filed by the parties and causing such inquiry as it may deem fit and in the fitness of things finding out the factum of accident from the available papers and the validity of insurance coverage may pass an award as a prudent person would do in the facts and circumstances of the case. Statutory duty is cast on him to do so. Being an authority under a benevolent statute he cannot dismiss the claim petition for default when some material can be made available. The rule making authority in its wisdom has framed rules conferring express authority on the Tribunal to dismiss a claim petition summarily at a particular stage, and thereafter has laid down the requirements on the part of the Tribunal to pass an award. These rules are in consonance with the Scheme of the Act and more so with the provisions enumerated under Section 110-B (presently 166). The concept of Order IX will be applicable to a dismissal order under Rule 5 as well as to an award passed under Rule 19 if the claimant is absent. Same also is applicable for the opposite parties if the award has been passed ex parte. To read otherwise would make the scheme of the Act and the provisions under the Rules nugatory and would defeat the stipulations made therein.' (quoted from the placitum)

It is submitted by Mr. Sanjay K. Agrawal that M.P. Motor Vehicles Rules, 1994 are almost part materia with the Orissa Rules. In this context I may profitably refer to the Rules 224, 230, 231, 234, 238 and 240 of Madhya Pradesh Motor Vehicle Rules, 1994 :

224. Summary dismissal of application.-- The Claims Tribunal after considering the application and the statement of the applicant recorded under Rule 223 dismiss the application summarily, if for reasons recorded to be in writing, the Claim Tribunal is of the opinion that there are no sufficient grounds for proceeding therewith :

Provided that, the Claims Tribunal shall not reject the application made for compensation under Section 140 on the grounds of any technical defects but shall give notice to the applicant and get the defects rectified.

230. Framing and determination of issues.-- (1) After considering the written statement or the result of examination of the opposite party and the result of the local inspection, if any, the Claim Tribunal shall proceed to frame the issues.

(2) After framing the issues, the Claims Tribunal shall proceed to record evidence thereon which each party may desire to produce. 231. Summoning of witnesses.-- If an application is presented by any party to the proceeding for the summoning of witnesses the Claims Tribunal shall on payment of the expenses involved, if any, issue summons for the appearance of such witnesses, unless it considers that their appearance is not necessary for just decision of the case.

234. Power of summary examination.-- (1) The Claims Tribunal during an inspection or at any other time, save at a formal hearing of a case pending before it, may examine summarily any person likely to be able to give information relevant to such case, whether such fact has been or is to be called as a witness in the case or not, and whether any or all the parties are present or not.

(2) No oath shall be administered to a person examined under sub-rule (1).

(3) Statements made by person examined under sub-rule (1) if reduced to writing, shall not be signed by the persons making the statement, nor shall they except as hereinafter provided, be incorporated in the record or utilised by the Claims Tribunal for the purpose of arriving at a decision in the case.

(4) If a witness who has been examined under sub-rule (1) makes in evidence any material statement contradiction any statement made by him in such examination and reduced to writing the Claims Tribunal may call his attention to such statement and shall in that case direct that the parties be furnished with the relevant part of such statement for the purpose of examining or cross-examining the witness.

(5) Any statement or part of a statement which is furnished to the parties under sub-rule (4) shall be incorporated in record.(6) Where a case is settled by agreement between the parties the Claims Tribunal may incorporate in the record any statement under sub-rule (1) and may utilise such statement for the purpose of justifying its acceptance of, or a refusal to accept, the agreement reached at.

238. Award of compensation.-- (1) The Claims Tribunal is passing orders, shall record concisely in a judgment the findings on each of the issue framed and the reason for such findings and make an award specifying the amount of compensation to be paid by the insurers and the owner of the vehicle who may be found vicariously responsible for causing the accident and also the person or persons whom compensation shall be paid.

(2) Where compensation is awarded to two or more persons, the Claims Tribunal shall also specify the amount payable to each of them.

(3) The Claims Tribunal may in its discretion pass such order in respect of costs incidental to any proceedings before it as it may deem fit.

240. Procedure to be followed by Claims Tribunal in holding enquiries.-- Application of certain provisions of Code of Civil Procedure, 1908 : Save as otherwise expressly provided in the Act or these rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) namely, those contained in Order V Rules 9 to 13; and 15 to 20, Order IX, Order XVII, Rules 3 to 10, Order XVI, Rules 2 to 21, Order XVII, Order XXI and Order XXIII, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto.'

6. On a conjoint reading of the aforesaid Rules, I am of the considered opinion that the ratio laid down in the case Bhagwan Malik (supra) does apply in full force to the case at hand. The High Court of Orissa has observed that under the Motor Vehicles Act, the Tribunal has been created so that parties can seek adjudication of their grievances and claim compensation for tortious acts and technical fetters and procedural obstacles are not to be emphasized by the Tribunal. In this context I may also profitably refer to the decision rendered in the case of Suresh Kumar Moharana and others v. Brundaban Bank and another, AIR 1981 Ori. 203, wherein it has been held as under :--

'No doubt, Rule 5 of the Rules provides for summarily dismissal of a claim petition. But if the claim petition is not dismissed summarily under Rule 5 and the proceeding is continued in accordance with the subsequent rules and ultimately

issues are framed under Rule 16, the Claims Tribunal must decide the issues and record its finding thereon in its judgment as provided by Rules 17 and 19. The Act and the Rules enjoin a duty upon a Tribunal to hold an inquiry into the claim and there is no scope for dismissal of the claim for default. On a careful consideration of the provisions of Section 110-B and Rules 16, 17 and 19. I am inclined to hold that after the issues are framed the Claims Tribunal has no jurisdiction to dismiss the claim petition for default or to refuse to make an award. After framing the issues, the Tribunal has [o proceed with the case, hold the inquiry, decide the issues and record its finding thereon notwithstanding the default by either party.'

This view has been affirmed by the Division Bench of Orissa High Court in the case of Bhagivan Malik (supra).

7. Appreciating the Orissa Motor Vehicle (Accidents Claims Tribunal) Rules, 1960 in juxtaposition with Madhya Pradesh Motor Vehicles Rules, 1994, I am of the considered opinion that it is obligatory on the part of the Tribunal to pass an award after settlement of issues and it has no jurisdiction to dismiss the claim petition for default or to refuse to make an award.

8. Now to the rejection of the application preferred under Order 9 Rule 9 of the Code. The Tribunal rejected the application solely on the ground that a medical certificate was not filed and the claimants had not instructed their counsel. It is noticed that out of the claimants one is minor and other two are women. Judicial notice can be taken of the fact that ordinarily in certain cases one person looks after the case. In view of this the Tribunal should not have taken exception to that. That apart, the Tribunal should not have been hypertechnical on insisting on production of the medical certificate. In my considered view, the analysis made by the Tribunal is not justified and it should have restored the application in the interest of justice. Accordingly, the impugned order is set aside and claim case is directed to be restored to file in its original number. It is further directed that the claim case shall be decided by end of February, 2001.

9. The civil revision is accordingly allowed. No costs.

10. Civil Revision allowed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**