SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Parwati Devi and ors. Vs. Manager, Ore Mining Company and ors.

Parwati Devi and ors. Vs. Manager, Ore Mining Company and ors.

SooperKanoon Citation : sooperkanoon.com/510735

Court : Madhya Pradesh

Decided On : May-04-2000

Reported in : 2002ACJ913

Judge : V.K. Agarwal, J.

Appeal No. : M.A. No. 377 of 1998

Appellant : Parwati Devi and ors.

Respondent : Manager, Ore Mining Company and ors.

Advocate for Def. : M.S. Ruprah, Adv.

Advocate for Pet/Ap. : P. Diwakar, Adv.

Disposition : Appeal allowed

Judgement :

V.K. Agarwal, J.

1. It appears that the appellants-claimants have filed an application claiming compensation before the Motor Accidents Claims Tribunal, Durg, on account of death of Chaturi Chouhan.

2. The claimants are L.Rs. of deceased Chaturi Chouhan. The appellant No. 1 is his widow while the remaining appellants, some of whom are minors, are his

children. It also appears that the claim petition was dismissed for want of prosecution on 23.3.96. On account of dismissal as above a restoration application under Order 9, Rule 9 read with Section 151 of Civil Procedure Code was filed by the claimantsappellants. That application for restoration has been dismissed by the impugned order dated 11.2.1998.

3. While dismissing the application for restoration, the learned Tribunal has taken note of the fact that the appellants-claimants have shown negligence and have been unable to establish sufficient cause for their non-appearance. It has also been pointed out that the claim petition was earlier also dismissed on 5.3.1990 and it was ordered to be restored by order dated 10.8.1994. However, even thereafter, the claimants-appellants did not actively participate in the proceedings of the suit and on 23.3.96, the appellant's counsel pleaded no instructions resulting in dismissal of the claim petition again.

4. The learned Counsel for appellants has submitted that the appellants are destitute and illiterate villagers. They have little means to prosecute the claim petition and that they are ignorant of the procedure of the court. It has been submitted that some of the claimants-appellants are minors. It has been urged that the dismissal of the claim petition as above would result in great injustice to them. It has been submitted that they depended on their counsel to prosecute the petition, who, however, did not do so. It has further been submitted that the appellants would now take care and attend the hearings of the case, in case the same is restored. The prayer as above has been vehemently opposed by learned Counsel for respondent No. 3.

5. However, after considering the contentions and also the fact that some of the claimants are minors and would be deprived of their legitimate claim in case of dismissal of the same for want of prosecution, their application for restitution in my opinion deserves to be allowed and they should be permitted an opportunity of hearing as has been prayed by them.

6. Accordingly, this appeal is allowed. The impugned order is set aside. The application of the claimants-appellants under Order 9, Rule 9 read with Section 151, Civil Procedure Code stands allowed. Claim Case No. 10 of 1990 is ordered

to be restored. However, in view of the old pendency of the claim petition and its delay basically on the ground of its dismissal twice for want of prosecution, it is directed that the Tribunal shall keep the above facts in consideration while awarding interest to the claimants-appellants. In view of the old pendency of the. matter the Claims Tribunal shall proceed to deal with it firmly and dispose it of expeditiously. It is further directed that the appellants shall be obliged to keep their witnesses present before the Tribunal on the date fixed in that regard by the Tribunal and that the Tribunal may extend the assistance of issuance of summons calling for the witnesses but the appellants-claimants shall make all efforts to keep their witnesses present and will not seek adjournment in that regard.

7. The Claims Tribunal is further directed to dispose of the claim petition after giving due opportunity of hearing to the parties within the upper limit of six months from the next date of appearance, i.e., 10.7.2000. The claimants-appellants shall appear before the Tribunal for partaking in further proceedings of the case on 10.7.2000.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com