

## Surendrapal Singh Wadhwa Vs Anusuiya Deewan And Ors

**Court:** Chhattisgarh High Court

**Date of Decision:** Sept. 6, 2019

**Acts Referred:** Code Of Civil Procedure 1908 " Order 9 Rule 13

**Hon'ble Judges:** Sanjay K. Agrawal, J

**Bench:** Single Bench

**Advocate:** Amit Sharma, Manoj Jaiswal, P.K. Tulsian

**Final Decision:** Allowed

### Judgement

Sanjay K. Agrawal, J

1. The petitioner herein is the owner of the vehicle, who was impleaded as a party (non-applicant) in the claim case No. 02/2016 preferred by the

claimants/respondents No. 1 to 5 herein before the Third Additional Motor Accidents Claims Tribunal, Raigarh and ultimately, an ex-parte award was

passed on 25/07/2017 granting a sum of â,1 22,58,184 /- along with interest in favour of the applicants/respondents No. 1 to 4 herein. Thereafter, the

present petitioner moved an application under Order 9 Rule 13 of the CPC stating that he was prevented due to sufficient cause from appearing

before the Claims Tribunal on the date when the case was called up for hearing i.e. on 7/07/2017 as he was seriously ill and on medical treatment,

therefore, in view of that, the ex-parte decree dated 25/07/2017 be set aside, which was seriously opposed by the respondent No. 6 herein i.e. the

Insurance Company, by filing reply.

2. By the impugned order dated 30/04/2019, learned Claims Tribunal rejected the application filed by the petitioner herein under Order 9 Rule 13 of the

CPC holding that the petitioner / owner of the vehicle has not produced the copy of the permit of his vehicle as he has violated the terms of the

Insurance Company, by which liability has been imposed upon the petitioner/owner against which he has preferred this writ petition.

3. Mr. Amit Sharma, learned counsel appearing for the petitioner would submit that the application filed by the petitioner under Order 9 Rule 13 of the

CPC was not considered on merits and no finding has been recorded by the Claims Tribunal that petitioner was not prevented by sufficient cause from

appearing before the Tribunal on the date when the case was called up for hearing but on the extraneous consideration that the petitioner did not

produce the permit of his vehicle and thereby, he violated the terms of the Insurance Company, his application has been rejected which is absolutely

bad in law.

4. Mr. Manoj Jaiswal, learned counsel appearing for respondents No. 1 to 5 and Mr. P.K. Tulsiyan, learned counsel appearing for respondent No. 6

would support the impugned order and submit that petitioner's conduct was not proper as he deliberately avoided appearing before the Court by not

producing the permit of the vehicle and thereby, the Insurance Company was exonerated by the liability, as such, the Claims Tribunal has rightly

rejected the application filed by the petitioner under Order 9 Rule 13 of the CPC.

5. I have heard learned counsel for the parties, considered his submissions and perused the records thoughtfully.

6. Admittedly, the applicants/ respondents No. 1 to 4 herein proceeded ex-parte on 07/07/2017 and ultimately, on 25/07/2017, an ex-parte award was

passed and since, the petitioner herein did not produce a copy of the permit which was against the terms of the Insurance Company, thereby, the

Insurance Company was exonerated by the liability fastening the liability upon petitioner/owner of the vehicle and the driver, for which the petitioner

herein moved an application under Order 9 Rule 13 of the CPC on 23/08/2017 for setting aside the ex-parte decree dated 25/07/2017 stating that he

was seriously ill and on medical treatment which is a sufficient cause for not appearing on the date when the case was called up for hearing i.e. on

07/07/2017.

7. It appears from the impugned order that no finding has been recorded by learned Claims Tribunal showing whether the reason assigned by the

petitioner would constitute sufficient cause or he has failed to demonstrate a sufficient cause for not appearing before the Court when the case was

called up for hearing. It was incumbent upon the Claims Tribunal to record a finding while adjudicating the application under Order 9 Rule 13 of the

CPC filed by the petitioner, as such, the finding as to ""sufficiency of cause"" for non-appearance of the petitioner on the date when the matter was

called up for hearing is *sin qua non* for deciding the said application.

8. Learned Claims Tribunal, while rejecting the application of the petitioner, has simply held that since the Insurance Company has been exonerated

from the liability for violation of the terms by the petitioner herein as the petitioner failed to produce a copy of permit of the vehicle and the said permit

has not even been produced along with the application under Order 9 Rule 13 of the CPC, the said application filed by the petitioner is not bonafide

and cannot be entertained.

9. In the considered opinion of this Court, the finding recorded by learned Claims Tribunal is absolutely perverse and in teeth of the provisions

contained under Order 9 Rule 13 of the CPC, as no finding with regard to the sufficiency of the cause for non-appearance of the petitioner before the

Court on 07/07/2018 has been recorded, the impugned order dated 25/07/2018 is hereby set aside and the matter is remitted back to learned Claims

Tribunal to make an enquiry on the said application and to pass a reasoned and speaking order in line with the provisions contained under Order 9 Rule

13 of the CPC within 45 days from the date of receipt of a copy of this order and the parties are directed to appear before the Claims Tribunal on 16th

September, 2019.

10. This writ petition is allowed to the extent indicated herein-above. No cost(s).