

U.P. JAL NIGAM, LUCKNOW  
V.  
MANJU GOEL & ORS.  
Civil Appeal Nos. 1821-1822 of 2009

MARCH 24, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,  
JJ.]

*Code of Civil Procedure, 1908 – O.9 – Dismissal of appeal by Government Department for non-prosecution – Reason for non-appearance stated to be not being aware of transfer of the appeal to new High Court created after re-organisation of State – The Department also denying its liability to discharge the award in view of transfer of liability to the Department concerned of the new State – Held : Since the reason for non-appearance was justified and the case involved important questions of law, appeal liable to be restored.*

**Award passed by Motor Accident Claims Tribunal, against a State Government Department, was challenged in appeal. The appeal was dismissed for non-prosecution. Application for restoration of the order was rejected. Hence the present appeals.**

**Appellant contended that it was not able to appear in the matter because the case was transferred to the High Court of new State created after re-organization of the erstwhile State. Appellant has also denied its liability to discharge the award as the liability for the same shifted to the Department concerned, of the newly created State.**

**Disposing of the appeals, the Court**

**HELD: In view of the factual position highlighted to justify the non-appearance, when the matter was taken up by the High Court; and since several important questions of law were involved, the matters deserve to**

A be heard on merit. Therefore, restoration of the appeal is directed. [Paras 3 and 5]

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B From the Judgement and Order dated 06.07.2005 of the High Court of Uttaranchal at Nainital in Application No. 3650 of 2005 and Application No. 3651 of 2005 in Appeal From Order No. 981 of 2001.

C Pradeep Misra, for the Appellants.

The Judgement of the Court was delivered by

**DR. ARIJIT PASAYAT, J.**

1. Leave granted.

D 2. Challenge in these appeals is to the order passed by a Division Bench of the Uttranchal High Court dismissing the appeal filed by the appellant. Since the writ appeal was dismissed for non prosecution, an application for restoration was filed which was rejected by the impugned order.

E 3. It is to be noted that a Claim Petition was filed before the Motor Accident Claims Tribunal, Pauri Garhwal (in short the 'MACT') by respondents 1 to 5, claiming compensation in respect of an accident where one Shri Sudhakar Goel (hereinafter referred to as the 'deceased') lost his life on F 19.3.1979. The claim made was Rs.11 lakhs. The MACT awarded Rs.9,18,288/- and the appellant was directed to pay the same. Against the Award an appeal was preferred before the Allahabad High Court which was numbered as Appeal No.335 of 1984 before the Allahabad High Court. After reorganization G of State of Uttar Pradesh, State of Uttranchal was formed. The appeal in question was transferred to the Uttranchal High Court. Being unaware of this transfer none appeared when the Uttranchal High Court took up the matter. The appeal was dismissed. Coming to know of the dismissal, an application for H restoration was filed, which was dismissed by the impugned

order. The stand of the appellant is that it has no liability as the liability of Uttar Pradesh Jal Nigam in respect of the territory within the Uttranchal State was transferred to the newly created Uttranchal Water Supply and Development Nigam and therefore the appellant has no liability to discharge the Award. In any event several important questions of law were involved. In the background it is submitted that the restoration application should have been allowed.

4. There is no appearance on behalf of the respondents in spite of service of notice.

5. While issuing notice this Court had indicated that the matter may be remitted for disposal on merits. However, direction was given to deposit a sum of Rs.5,00,000/- with the concerned MACT without prejudice to the claims involved. It is stated that the deposit has been made. In view of the factual position highlighted to justify the non-appearance when the matter was taken up by the High Court, we are of the view that the matters deserve to be heard on merit. We, therefore, set aside the impugned order, direct restoration of F.A.F.O. 335 of 1984 (old number) 981 of 2001 (new number) titled *U.P. JAL Nivam v. Smt. Manju Goel and others*.

6. Since the matter is pending since long, we request the High Court to dispose of the matter as early as practicable after giving notice to the parties concerned.

7. The appeals are disposed of accordingly.

K.K.T.

Appeals disposed of.