

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1163 of 2014

Mohammad Imran, S/o. Abdual Naim Khan, Aged About 30 Years, R/o. Near Masque Azad Chouk, Pendra, Tahsil Pendra, Distt. Bilaspur, C.G.

---- Petitioner

Versus

1. Anand Agrwal, S/o. Harilal Agrwal, Aged About 32 Years, R/o. Near Jain Mandir, Pendra, Tahsil Pendra, Distt. Bilaspur, C.G.
2. Shriram General Insurance Company Ltd., E-8 I.P.I.P.R.I.I.C.O., Sitapur, Jaipur (Rajasthan)

---- Respondents

For Appellants : Mr. Rajesh Jain, Advocate
For Respondent No.2 : Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

04.09.2015

1. The instant appeal is against the award dated 27.09.2014, passed in Claim Case No.4/2013, by the Court of learned Additional Motor Accident Claims Tribunal, Pendra Road, District Bilaspur (C.G.).
2. Briefly stated facts are that on 13.09.2012, the claimant/appellant was traveling in a Bus bearing C.G.10/G/0350 to his place of working at BastiBagra. The vehicle was owned by the Non-applicant No.1 Anand Agrawal and it was being driven by him. While he was traveling, the Bus being driven in rash and negligent manner met with an accident near a turning. By impact of such accident, right leg of claimant was fractured and subsequently it was operated and a rod was inserted. During the course of trial, the Non-applicant No.1, owner/driver of the vehicle, did not file any written statement.

3. The Non-applicant No.2, Insurance Company, refuted the averments of the claim petition and stated that no accident has actually happened in the said vehicle. It was therefore stated that since the accident did not happened at all, therefore, the insurance company cannot be held liable to pay the amount of compensation. Further, as an additional plea, it was contended that at the time of accident, the driver of the Bus was not holding a valid licence and therefore the Insurance Company cannot be held liable for the accident.
4. The learned Claims Tribunal after evaluating the facts and evidence came to a finding that the accident had happened due to the rash and negligent driving of the Bus bearing No.C.G.10/G/0350, which was driven by the Non-applicant No.1 and he being the Driver/Owner of the vehicle was responsible for the accident caused. The said finding is not under any challenge, therefore, in absence of any challenge to such finding, the same are affirmed.
5. Mr. R.K.Jain, learned counsel for the appellant/claimant would vehemently contended that the Tribunal has failed to take into account the permanent disability certificate, which is exhibited as Ex.P-99. He further submits that the said certificate having been issued by the Medical Board of Sanatorium Camp, wherein the disability is shown to the extent of 45% it should have been accepted by the Court below. He further submits that the Court should have relied upon such document so as to assess the functional disability of the appellant/claimant. Therefore, he would submit that the just compensation has not been awarded. He further submits that the Court below has disbelieved the disability certificate and in the alternative it was prayed that the case may be remitted back to the Tribunal taking into the benevolent object of the Motor Vehicles Act.
6. Per contra, Mr. Pankaj Agrawal, learned counsel appearing on behalf of the Respondent No.2 vehemently opposes the argument advanced by the

learned counsel for the appellant. He would submit that the certificate though was placed on record and exhibited but all the documents were not examined and the Court has rightly not taken the cognizance of it and therefore remitting the matter to the Court below would lead fill-up the lacuna.

7. I have heard the learned counsel appearing for the parties, perused the pleadings, documents & evidence on record.
8. The appellant along with the petition has enclosed the bunch of medical documents which shows that he underwent the medical treatment. Ex.P-99 is a disability certificate. Perusal of the disability certificate shows that it was issued by the District Medical Board of Sanatorium Camp, Gourella and signed by the Doctors. Admittedly, perusal of the record shows that the Doctor who issued the said certificate has not been examined. This fact is established by the other documents on record that the appellant has sustained injuries out of the accident. The certificate of disablement is also placed on record which goes to show the percentage of disablement caused, however, the Doctor has not proved the same and it has been exhibited by the appellant/claimant himself. Therefore, in view of this, in the opinion of this Court, it would be just and expedient considering the benevolent nature of the Motor Vehicles Act that the case be remitted back to the Court below to examine the Doctor so as to assess the nature of disablement caused to the appellant/claimant. It is not a case that the appellant had not sustained any injury but only on the issue that the disablement certificate though placed on record, the Doctor has not been examined, the actual claim of the appellant cannot be sidelined.
9. In view of foregoing, the appeal is remitted back to the Tribunal to adjudicate the matter with a direction that the appellant shall be at liberty to call the Doctor through the intervention of the Court so as to establish the degree of disability caused to him vide Ex.P-99. The finding with respect to the rash

and negligent act is upheld. The Court shall reassess the quantum of compensation on the basis of evidence led i.e. of the Doctor.

10. The parties shall appear before the Court below on 28th October, 2015.

Sd/-
(Goutam Bhaduri)
Judge