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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.564 of 2015**

HDFC Ergo General Insurance Company Limited Corporate Office, 6th Floor, Leela Bhasnali Park, Andheri, East Mumbai (Maharashtra) 400059 At Presentl - Devendra Nagar Road, Near Railway Line, P.S. Devendra Nagar, Civil And Revenue Dist. Raipur (Chhattisgarh)

---- Petitioner

Versus

1. Smt. Mamta Chaturvedi W/o Late Dinesh Chaturvedi Aged About 32 Years
2. Ku. Pallavi D/o Late Dinesh Chaturvedi Aged About 6 Years (Minor), Representing Through Their Mother Smt. Mamta Chaturvedi
3. Utkarsh S/o Late Dinesh Chaturvedi Aged About 1 Years (Minor), Representing Through Their Mother Smt. Mamta Chaturvedi.

All are R/o Chhipli, Tahsil Nagri, P.S. Nagri, Dist. Dhamtari (Chhattisgarh) (Claimants)

4. Govind S/o Sukhan Aged About 33 Years Profession- Driver, R/o Mahadevpara, Parsagudi, Tahsil And Police Station- Rajpur Dist. Balrampur (Chhattisgarh) (Driver Of Tracter 735)
5. Bholu Prasad Yadav S/o Late Dhannu Yadav Aged About 58 Years R/o Mahadevpara, Parsagudi, Tahsil And Police Station- Rajpur Dist. Balrampur (Chhattisgarh) (Owner Of Tractor 735)
6. Puranik Ram Chaturvedi S/o Dhanajit Aged About 55 Years Profession- Teacher, R/o Vill. Khapri, Tahsil Kurud, P.S. Kurud, Dist. Dhamtari (Chhattisgarh) (N.A.No. 4)
7. Smt. Rukmani Bai W/o Shri Puranil Chaturvedi Aged About 53 Years R/o Vill. Khapri, Tahsil Kurud, P.S. Kurud, Dist. Dhamtari (Chhattisgarh) (N.A.No. 4&5)

---- Respondents

Shri Bhaskar Payashi, counsel for the petitioner.
 Shri Anil Gulati, counsel for respondents 1 to 3.
 None for respondents 4 & 5, though represented.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****10.12.2015**

Heard.

2. Brief facts required for disposal of the instant petition is that before the Motor Accidents Claims Tribunal, Dhamtari, Claim Case No.152/13 (Smt. Mamta Chaturvedi & Ors. Verses, Govind & Ors.) filed by the claimants/respondents herein is pending for grant of compensation. On 22.6.2015, the petitioner/non-applicant had filed an application under Rule 225(4) of the Chhattisgarh Motor Vehicles Rules, 1994 (for short 'Rules 1994') for filing of the documents and the tribunal while allowing the same held that the documents are regarding insurance and driving licence and the same are required for the proper adjudication of the matter. The petitioner/non applicant No.3 had also filed application under Order 16 Rule 1 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking permission to call transport officer, Ambikapur regarding licence. The same was objected by the applicants/respondents 1 to 3. The Court below after due consideration, dismissed the application and held that on settling date 15.5.2015 the petitioner had not filed the list of witnesses and only orally submitted that they will examine two witnesses, hence, the application under Order 16 Rule 1 of the CPC is not attracted and they were already granted three opportunities for evidence and as per the amended provisions of the Code, more than three opportunities shall not be given, hence, the Court below closed the evidence of the petitioner and also of the other respondents and fixed the matter for final arguments. Against the said order the petitioner has preferred the instant petition and prayed that the order passed by the Tribunal is perverse, illegal and not sustainable under the law. The Tribunal has taken the relevant documents on record, but failed to give proper opportunity to prove the same by calling concerned person or authority. The finding of the tribunal is bad in law and arbitrary and is liable to be

set aside, hence it is prayed that the petition may be allowed and order dated 22.6.15 may be set aside and the petitioners may be given opportunity to adduce evidence and to prove the documents.

3. On behalf of respondents 1 to 3 no any reply to the petition has been filed. Also no reply has been filed on behalf of respondents 4 & 5.

4. Heard the parties present before the Court.

5. Learned counsel for the petitioner duly supported the petition and submitted that as the ground taken in the petition, the petition may be allowed and relief as prayed may be granted.

6. On the other hand, counsel for respondents 1 to 3 supported the impugned order passed by the Court below and submitted that as the order is well found, the petition may be dismissed.

7. In order to appreciate the arguments advanced on behalf of the parties, I have perused the record of the petition.

8. On minute examination, the following facts emerges from the matter.

(1) Though the Court below held that documents in relation with issuance of driving licence are relevant for the proper adjudication of the case, proper opportunity to adduce evidence and prove those documents were not given.

(2) As per Rule 240 of the Rules 1994, provisions of Order 16 Rule 1 of the CPC is not applicable with the proceedings before the Tribunal.

(3) The Court below failed to consider the provisions of Rule 231 of Rules 1994 which read as under:

“231. Summoning of witnesses.- If an application is presented by any party to the proceedings 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 a just decision of the case.”

(4) As per Rule 240 of the Rules 1994, examination of the witnesses on affidavit under Order 18 Rule 4 of the Code is not applicable in proceedings before the Claims Tribunal.

(5) Rule 235 of the Rules 1994 gives a different procedure for recording the evidence goes to show that manner in which tribunal recorded the Statement is different as it vis-a-vis to recording of the evidence before the civil Court. Rules 235 reads as under:

“235. Method of recording evidence.- The Claims Tribunal shall on examination of a witness, proceed to make a brief memorandum of a substance of the evidence of such witness and such memorandum shall be written and signed by the Claims Tribunal and shall form part of the record:

Provided that, if the Claims Tribunal is prevented from making such memorandum, it shall record the reason of its inability to do so and shall cause such memorandum to be made in writing from its dictation and shall sign the same and such memorandum shall form part of the record:

Provided further, that the evidence of any medical witness shall be taken down, as nearly as may be, word by word.”

(6) As per Rule 241 of the Rules 1994, the legislature has given authority to the Claims Tribunal to follow such summary proceedings as it think fit.

9. Prayer to call the witnesses from the RTO regarding the licence is appropriate to dispose of the matter as required. With the above proviso of Order 17 Rule 1 as per the settled law on the basis of the factual and legal position if occasion so arises more than three opportunities may be provided for proper adjudication of the matter.

10. The compensation cases are the social litigation matter wherein the heirs of the deceased or the injured in a motor accident case pray

for adequate compensation for their livelihood. In the present case, after the death of one Dinesh Kumar legal heirs of the said deceased prayed before the Claims Tribunal for the compensation as the deceased met with an accident.

11. On due consideration, looking to the above facts, in the considered view of this Court, order passed by the Court below is illegal, improper and the same require interference.

12. Consequently, the petition is allowed. Impugned order dated 22.6.15 is hereby set aside. The Court below is directed to give proper opportunity to the petitioner to adduce evidence by allowing them to pay PF applicable for the issuance of summons to the witnesses as they are government servants and also to prove their pleadings as in the written statement. The Court below is further directed after providing opportunity to adduce the evidence by the parties as applicable, the matter may be disposed of as expeditiously as possible.

13. Registrar General is directed to circular a copy of this order to the Motor Accidents Claims Tribunal working in the State for their future guidance .

**Sd/-
(Chandra Bhushan Bajpai)
JUDGE**