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HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 763 of 2015**

- Tata A. I. G. General Insurance Company Limited Branch Manager, Dhamtari, Office At 1st Floor, Raja Market, Ratnabandha Chowk, Above Gurunanak Electronic, Tahsil & District Dhamtari, Through Chief Mananger Claim, Tata A I G.

---- Petitioner**Versus**

1. Kaushilya Bai Wd/o Nakul Ram Sahu, Aged About 48 Years R/o Village Bhirai, Post Palari, Tahsil Gurur, District Balod (Chhattisgarh)
2. Jawantin D/o Late Nakul Ram Sahu, Aged About 17 Years Minor Represented Through Mother Kaushilya Bai Wd/o Late Nakul Ram Sahu, R/o Village Bhirai, Post Palari, Tahsil Gurur, District Balod (Chhattisgarh)
3. Ku. Reetu D/o Late Nakul Ram Sahu, Aged About 15 Years Minor Represented Through Mother Kaushilya Bai Wd/o Late Nakul Ram Sahu, R/o Village Bhirai, Post Palari, Tahsil Gurur, District Balod (Chhattisgarh)
4. Lalchand S/o Late Nakul Ram Sahu, Aged About 8 Years Minor Represented Through Mother Kaushilya Bai Wd/o Late Nakul Ram Sahu, R/o Village Bhirai, Post Palari, Tahsil Gurur, District Balod (Chhattisgarh)
5. Urmila D/o Late Bisali Ram Sahu, Aged About 65 Years R/o Village Bhirai, Post Palari, Tahsil Gurur, District Balod (Chhattisgarh)
6. Ramesh Kumar Mankuhra S/o Ramnarayan, Caste- Kandra, R/o Azad Chowk, Millpara, Police Station- Patan, District Durg (Chhattisgarh)
7. Smt. Devmati Thakur W/o Darbari Ram Thakur, Aged About 34 Years R/o Village Kharra, Post Teligadra, Tahsil Patan, District Durg (Chhattisgarh)

---- Respondents

For Petitioner : Shri Manish Upadhyay,
None for the respondents, though represented.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****25/02/2016**

1. It is submitted on behalf of the petitioner that no any written statement or application has been filed on behalf of the respondents. It is further submitted that looking to the order passed by this Court in WP (227) No.508/15 Kaushilya Bai and 4 others Vs Ramesh Kumar Mankuhra and 2 others dated 29/10/2015, which is in relation of the matter pending before the Court below under challenge by the instant WP

227 whereby and whereunder this Court as per Para-11 of the order quashed the rejection of opportunity to adduce the evidence on behalf of the petitioners/applicants, and directed the Court below to afford a reasonable opportunity to all the parties including present petitioner to adduce evidence in the matter. The matter may be disposed off finally at this stage.

2. On due consideration, matter heard finally.
3. Facts in brief required for adjudication of the instant WP(227) are that claim case No.148/14 Kaushilya Bai and 4 others Vs Ramesh Kumar Mankuhra and 2 others is pending before the Motor Accidents Claims Tribunal, Dhamtari (C.G.) under Sections 166 read with Section 140 of the Motor Vehicles Act, 1988. The petitioner is non-applicant No.3 in the said claim case, on 13/02/2015 the Court proceeded *ex-parte* in the absence of present petitioner. On 19/02/2015 on an application filed under Order 9 Rule 7 of the Code of Civil Procedure, 1908 (in short 'the Code') for gravity the Court. The Court below allowed the said application to set aside the *ex-parte* and listed the matter for the written statement of the present petitioner. On 09/04/2015 the opportunity to file written statement has been closed by the Court for petitioner/non-applicant No.3 thereafter, on 16/04/2015 the Court below framed the issue, fixed the matter for settling date. Also on the same date, petitioner/non-applicant No.3 submitted written statement along with an application under Section 151 of the Code to accept the said WS in the matter. The said application under Section 151 of the Code were rejected on 25/04/2015. On the other hand, on 26/06/2015 the Court below allowed the application under Order 8 Rule 1 of the

Code filed by the petitioner whereby he had filed the documents to prove this case. The Court below allowed the said application though, the applicant/respondents No.1 to 5 had no objection for accepting the WS and the same is mentioned in the order-sheet dated 25/04/2015. Despite no objection the Court by rejecting the application under Section 151 of the Code dismissed the WS filed in this behalf. Against the said order petitioner had filed instant WP(227) wherein.

4. It is submitted that order passed by the Court is bad in law illegal and improper on one side. Court allowed the documents filed on behalf of the petitioner at a later stage and before that Court below rejected the application under Section 151 of the Code for taking the WS in the record. It is further ground taken that in the Rule 240 of the Chhattisgarh Motor Vehicles Rules, 1994 in (in short 'the Rules, 1994'). There is no any application permitted with the proceedings in a claim case regarding order 8 of the Code, thereby the order 8 of the Code is not strictly applicable in the matter. It is further submitted that vide order dated 29/10/2015 passed in WP (227) No.508/15 this Court granted opportunity to all the parties in the matter to adduce their evidence and with this, the Court below listed the matter for the evidence of respondent 1 to 4 on 26/02/2016. It is also submitted in the larger interest of justice, as this is a claim case regarding compensation law, a social legislation, reasonable opportunity may be given to adduce their evidence in support of formal pleading. Hence, the order passed by the Court below dated 09/04/2015, 25/04/2015 and 26/04/2015 may be quashed.
5. There is no any written response/objection or no any oral objection as

the respondents, though represented.

6. Learned Counsel for the petitioner supported the entire grounds and facts of the instant WP(227) and submitted that in the larger interest of justice looking to the facts, the instant WP(227) may be allowed and relief as prayed be granted.
7. From close scrutiny of the matter as in the instant WP(227) and the document annexed, it appears that this Court vide order dated 29/10/2015 passed in WP (227) No.508/15 set aside the rejection of opportunity to adduce the evidence on behalf of the present respondents 1 to 5, and this Court directed the Court below to give a reasonable opportunity to all the parties concerned to adduce the evidence in the matter and also as directed and as submitted matter is fixed for evidence of respondent No.1 to 5 i.e. applicants in the said claim case on 26/02/2015.
8. For the relevance, the Rule 240 of the Rule 1994 is relevant which reads as under :-

“ Procedure to be followed by Claims Tribunal in holding enquiries- Application of certain provisions of Code of Civil Procedure 1908; Save as otherwise expressly provided in the Act or these rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) namely, those contained in Order V, Rules 9 to 13 and 15 to 20, Order IX, Order XVIII, Rules 3 to 10, Order XVI, Rules 2 to 21, Order XVII, Order XXI and Order XXIII, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto.”

9. From perusal of the said Rule 1 goes to show the provisions are regarding order 8 are not incorporated. Regarding its application thereby it goes to show order 8 may not be applied for proceeding in claim case strictly in the manner as it is. Also the Court below vide order dated 26/06/2015 allowed the application filed under Order Rule

8 Rule 1 of the Code and thereby taken the document in the record filed on behalf of the petitioner. It is also apparent that the interim application under Section 151 of the Code followed by written statement was not objected by the applicant/respondents 1 to 5. It is apparent from the record, though few opportunity were given for the written statement to the petitioner as an Insurance company. It would be presumed that drafting, filing any written statement it requires some administrative approval on behalf of the management of the company. It is also apparent that on the date when issues were framed, the very same date the written statement has been filed along with an application and while keeping in the mind that order 8 is not incorporated in the Rule 240 of the Rule 1994 at a later stage the petitioner were allowed to file documents, as per order in WP(227) No.508/15. This Court ordered for the reasonable opportunity to the parties to adduce their evidence also in the larger interest of justice it would be appropriate to reasonably allow a party to adduce his pleadings also the evidence in support of the pleading.

10. On due consideration, looking to the entire facts this Court is a view that the order dated 09/04/2015, 25/04/2015 and 26/06/2015 require interference. Hence, all the above three orders passed by the Court below are hereby quashed. So far as it relates with the closer of the opportunity to file WS, rejection of the application under Section 151 of the Code followed by WS and also the closer of the opportunity of petitioner to adduce his evidence and also in the order passed WP (227) No.508/15. Hence, all the three above orders are quashed regarding the relief clause of the petitioner. The written statement submitted on behalf of the petitioner be taken in the record. The

application under 151 of the Code is hereby allowed. And also the Court below is directed to grant a reasonable opportunity to adduce the evidence to the petitioner/non-applicant No.3 after the evidence of respondents No. 1 to 5 and also respondents No.6 and 7 as per provisions of law, petitioner may file certified copy of the order for compliance before the Court below. Registrar (Judicial) is also directed to send the copy of the order to the Court below for compliance.

11. Certified copy today.
12. The WP (227) is allowed.

Sd/-
Chandra Bhushan Bajpai
Judge