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HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 815 of 2009**

Chandrashekhar Rai, aged about 29 years, S/o Chandradeep Rai, occupation Truck Driver, R/ Gram Jora, Post Krishak Nagar, Police Station, Telibandha, Tehsil and District Raipur (CG).

---- Appellant**Versus**

1. Raj Bahadur Pal aged about 48 years S/o Satya Narayan Pal, R/o Kumar Road Carriers, Prem Ganga Complex, Chhokra Nala, Raipur, Tehsil and District Raipur (CG).
2. The New India Assurance Co. Ltd. through Divisional Manager, Divisional Office No.2, Bajrang Market, GE Road, Raipur, Tehsil and District Raipur (CG).

---- Respondents**MAC No. 1345 of 2008**

The New India Assurance Co. Ltd. Divisional Office No.2, Bajrang Market, GE Road, Raipur, Tehsil and District Raipur (CG) through Divisional Manager, New India Assurance Co. Ltd. opposite Rajiv Plaza, Near Bus Stand, Bilaspur.

---- Appellant**Versus**

1. Chandrashekhar Rai, aged about 29 years, S/o Chandradeep Rai, occupation Truck Driver, R/ Gram Jora, Post Krishak Nagar, Police Station, Telibandha, Tehsil and District Raipur (CG).
2. Raj Bahadur Pall aged about 48 years S/o Satya Narayan Pal, R/o Kumar Road Carriers, Prem Ganga Complex, Chhokra Nala, Raipur, Tehsil and District Raipur (CG).

---- Respondents

For Appellant

:Shri RS Marhas, Advocate.

For respondent/New India Assurance Co. :Shri Dashrath Gupta, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****25.09.2017.**

1. By this common judgment both the appeals are being disposed of, as common facts & issues are involved in these appeals and arise out of the same accident.
2. Both the appeals under Section 173 of the Motor Vehicles Act have

been filed against the award dated 30.06.2008 passed by the 7th Additional Motor Accident Claims Tribunal, Raipur, in Claim Case Nos.103/2006. MAC No. 815 of 2009 is an appeal by the claimant seeking for enhancement of compensation and MAC No.1345 of 2008 is an appeal by the insurance company assailing the quantum of compensation awarded by the Tribunal.

3. Since the appeal of the claimant is of the year, 2009 and considering that it is an old case and as nobody is representing the appellant, this court thought it fit to take assistance of Shri RS Marhas, Advocate in the disposal of the appeal.
4. A perusal of the proceeding reflect that the accident in the instant case occurred on 02.06.2005 and the vehicle involved in the accident was Truck bearing registration No.CG-04-ZC-5483. The claimant in the instant case was the driver of the offending Truck. As a result of the accident, the claimant received fracture of right as well as left femur bone and the Tribunal has fixed the compensation of Rs.4,61,520/- along with interest @ 6 percent per annum from the date of application.
5. The compensation awarded was purely on the basis of evidence of the doctor who has opined the claimant suffering from permanent disability of 86 percent. This disability certificate itself has been doubted by the insurance company on the ground that the doctor who has given the certificate is not the doctor who has treated the claimant neither he is a member of medical board who was otherwise authorized to issue the disability certificate.

6. According to insurance company the nature of injuries which has been sustained by the claimant could not prove the disability to the extent of 86 percent and submits that it would be better if the claimant examined himself by a District Medical Board which is otherwise authorized to issue disability certificate. He further submits that the amount of compensation awarded by the Tribunal is exorbitant and is based only on the report of the doctor who has been examined on behalf of the claimant.
7. Considering the total facts and circumstances of the case, particularly the fact that the nature of injuries the claimant sustained was only that of fracture of his right and left femur bone, this court is of the opinion that it would be more appropriate if the matter is remitted back to the concerned Tribunal for taking a fresh decision in the matter after granting the claimant an opportunity of leading evidence afresh so far as his medical disability is concerned. The claimant shall also have an opportunity of approaching the District Medical Board in getting disability certificate and on the basis of which he may further call for the doctor to lead evidence before the Tribunal or make a request the Tribunal for examining the doctor on commission and thereafter, the Tribunal may take appropriate decision at the earliest.
8. With the aforesaid direction, the impugned award is set aside and the matter is remitted back to the Tribunal to decide the case afresh reserving right of the claimant to produce proper disability certificate issued from the competent medical board. Considering the seniority

of the case, it is expected that the Tribunal shall decide the case at the earliest as far as possible. Record of the court below be sent back forthwith.

9. Before parting with the matter, this court appreciates the valuable assistance rendered by Shri R.S. Marhas, Advocate. The Secretary, High Court Legal Aid Committee shall send a copy of this judgment to the District Legal Services Authority, who in turn, shall make all endeavors to serve the same to the claimants.

Sd/-
(P. Sam Koshy)
Judge

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