

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 161 of 2016

1. Jay Kumar Prajapati S/o Kali Charan Prajapati, aged 26 years, R/o Ward No. 06, Deepaka, Civil & Revenue District Korba (Chhattisgarh).....(Applicant)

---- Appellant

Versus

1. Rakesh Kumar Chauhan S/o Sahetarram, aged 24 years, R/o Rangole, P.S. Pali, Civil & Revenue District Korba (Chhattisgarh).....(Non Applicant No.01)
2. Sapna Singh W/o Lallu Singh, aged 25 years, R/o B-565, Pragati Nagar, S.E.C.L. Dipika Project, P.S. Deepaka, Tahsil Deepaka, Civil & Revenue District Korba (Chhattisgarh).....(Non Applicant No.02)
3. National Insurance Company Limited Branch Office 13, Minu Complex, Kosabadi Korba, Choukey ITI Rampur, P.S. City Kotwali Korba, Civil & Revenue District Korba (Chhattisgarh).....(Non Applicant No. 03)

---- Respondents

For Appellant – Shri S.V.Purohit, Advocate.

For Respondents 1 and 2 – None, though served.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

12-01-2017

1. Perused note of the office dated 10-01-2017. As per the note, notice was issued for respondent No.3 through registered mode and as 30 days have been lapsed, therefore, it may be treated that notice issued to respondent No.3 is deemed to have been served. The office note also is for postal track report along with copy of the cosignment number.
2. On perusal of Rule 167 of the High Court of Chhattisgarh Rules, 2007 proviso, notice issued to respondent No.3 be deemed as served.
3. With this, I.A.No.2/2016 for instruction to Registry that the case be fixed for final hearing, I.A.No.3/2016 for giving instruction to the Registry whether the registered notice delivered to respondent No.3 for confirmation from the concerned post office are disposed of.
4. This is admitted MAC filed on behalf of the the appellant against the order passed by the concerned Tribunal dated 15-12-2015 whereby and

whereunder the learned Tribunal dismissed the interim application of the appellant/claimant under Section 140 of the Motor Vehicles Act, 1988 (in short 'the Act, 1988') for interim compensation of Rs.25,000/- on the principles of no fault liability. Learned counsel for the appellant would submit that as the Court below wrongly dismissed the said application, the order is bad in law, the Tribunal ought to give Rs.25,000/- as compensation on the basis of no fault liability under the provisions of Section 140 of the Act, 1988, hence, the appeal may be allowed and the order passed by the Tribunal may be set aside.

5. To appreciate the argument advanced on behalf of the appellant, provision of Section 140 of the Motor Vehicles Act, 1988 is relevant which reads as under:-

"140. Liability to pay compensation in certain cases on the principle of no fault.— (1) where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-rule (1) shall not defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A."

6. On due consideration, this section speaks regarding death or permanent disablement. In the present case, question of permanent disablement is attracted as the applicant suffered injuries and fracture was reported.

7. On perusal of the order dated 15-12-2015, it appears that the applicant/appellant had filed certificate for disablement. There is no any certificate filed on behalf of the appellant regarding the permanent disablement. With this, the Court below dismissed said application as the applicant failed to demonstrate the permanent disablement. With this, provisions of section 140 of the Act, 1988 is not attracted in the present appeal, also the applicant had not filed any certificate which shows permanent disablement of the appellant.

8. On due consideration, as the Court below not committed any error of law to dismiss the said application as the same is not supported by the certificate regarding permanent disablement, even also the matter has to be

disposed of on its merit, the appellant/applicant is having opportunity to prove during hearing in the concerned Tribunal that the applicant/appellant suffered permanent disablement, if so, the Tribunal may award suitable compensation as required under the law. With these observations, the instant MAC is disposed of as dismissed.

9. MAC dismissed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE