

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 1203 of 2014

- Gajanand Prasad Pandey, son of Shri Devdutt Pandey, aged about 76 years, resident of village and Post Belsari, Tahsil Takhatpur, P.S. Takhatpur, District Bilaspur (C.G.)

---- Appellant

Versus

1. Smt. Alka Shukla wife of Rajkumar Shukla, aged about 40 years, resident of Near Santoshi Mandir Main Road, Torwa, Thana Tarbahar, District Bilaspur (C.G.)
2. Mathura Prasad Jaiswal son of Lakhan Prasad Jaiswal, aged about 28 years, R/o Girarikhurd, Thana Rajendragram, District Shahdol (M.P.) presently R/o. Near Kalimandir Tifra, Bilaspur (C.G.)
3. The Oriental Insurance Company Ltd. Branch Bilaspur, Through Branch Manager, Bilaspur (C.G.)
4. Punjab National Bank, Barela Branch, Takhatpur Through Branch Manager Takhatpur, District Bilaspur (C.G.)

---- Respondents

For Appellant	:	Shri K.P.S. Gandhi, Advocate
For Respondents 1 & 2	:	None
For Respondent No.3	:	Shri Arvind Shrivastava, Advocate
For Respondent No.4	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

17.01.2019

1. This is Claimant's appeal against the order dated 18.07.2012 passed by the Second Additional Motor Accidents Claims Tribunal, Bilaspur in Case No. 161/2011, whereby, an application under Order 17 Rule 1 of the C.P.C. filed by the Claimant seeking adjournment of the claim case on the ground that he is suffering from sciatica rejected by the Tribunal and consequently his claim petition filed under Section 166 of the Motor Vehicles Act has also been dismissed.
2. Learned counsel for the Claimant/Appellant submits that the Appellant was

73 years of age when he filed application under 17 Rule 1 C.P.C seeking adjournment of the case for the purpose of recording his evidence as he was not physically fit to appear before the Tribunal for giving his evidence. However, the Tribunal without considering the genuine difficulty of the Appellant and the benevolent provisions of the Motor Vehicles Act rejected the said application and consequently the claim petition of the Appellant. Therefore, in the facts and circumstances of the case, the matter may be remanded back to the Tribunal for deciding the claim petition on merits after giving due opportunity of hearing and of adducing evidence to the parties.

3. Learned counsel for the Respondent No.3 supported the award passed by the Tribunal. He submits that as per order-sheet dated 18.07.2012, it has been categorically mentioned that five opportunities of hearing were given to the Claimant/Appellant on earlier occasions to adduce evidence, but at all times, the Appellant was said to be ill and did not appear before the Tribunal. Therefore, the Tribunal has rightly dismissed the claim petition of the Appellant by the impugned order which needs no interference by this Court.

4. I have heard learned counsel for the parties and perused the record of the Tribunal.

5. It is not disputed by both the parties that the Appellant was 70 years old at the time of filing of claim petition on 13.08.2009 and that claim petition was dismissed on 18.07.2012.

6. Considering the facts and circumstances of the case, particularly the fact that at the time of filing of the claim petition, Appellant was 70 years of age and as such, at present he must be 79 years of age, the fact of his illness and the benevolent provisions of the Motor Vehicles Act, this Court is of the view that ends of justice would be served, if one more opportunity is given to the Appellant to adduce evidence in support of his case. Therefore, the matter is required to be remanded back to the Tribunal for deciding the claim case on merits after recording evidence of the parties in accordance with law.

7. Accordingly, the appeal is allowed and the impugned order is hereby set aside. The matter is remanded back to the concerned Tribunal to pass an award on merits in accordance with law as expeditiously as possible, preferably within a period of four months from the date of receipt of record.
8. Parties to appear before the Tribunal on 11th February, 2019. It is made clear that the Appellant shall positively appear before the Tribunal on the said date and if he fails to appear before the Tribunal on the said date, the Tribunal shall decide the claim case on the basis of material available on record strictly in accordance with law.
9. Record of the case be sent back to the Tribunal forthwith.
10. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge