

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1057 of 2016**

1. Avnindra Singh, S/o Late Shri Ramakant Singh, Aged About 62 Years Occupation- Agriculturist and Contractor, R/o- Janakpur, District- Korea (C.G.), at Present Through Nishant Singh, S/o Avnindra Singh, House No. C-7, Vasundhara Vihar, Godhanpur, Ambikapur, Revenue And Civil District- Surguja (C.G.)

---- Appellant/Claimant**Versus**

1. Santosh Prasad Keshri (Died) (Owner cum Driver)
Through Legal representatives
 - 1A. Smt. Sadhna Keshri, W/o Late Santosh Prasad Keshri, Aged About 45 Years,
 - 1B. Shivangini Keshri, D/o Late Santosh Prasad Keshri, Aged About 23 Years,
 - 1C. Pankaj Keshri, S/o Late Santosh Prasad Keshri, Aged About 22 Years,
 - 1D. Pranshu Keshri, S/o Late Santosh Prasad Keshri, Aged About 20 Years,
- All are R/o Mission Chowk, Kedarpur, Ambikapur, Revenue And Civil District- Surguja (C.G.) (**Non-Applicant No. 1**)
2. The Branch Manager, The Oriental Insurance company, Limited, Near Ambedkar Chowk, Ambikapur, Revenue And Civil District- Surguja (C.G.). (**Non-Applicant No. 2**)

---- Respondents

For Appellant	:	Shri Sunil Tripathi, Advocate.
Respondent No. 2	:	Shri T.K. Tiwari, Advocate

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****21/06/2019**

1. This appeal is preferred by the claimant injured under Section 173 of the Motor Vehicles Act, 1988 against the award dated 12/05/2016 passed by Vth Additional Motor Accident Claims Tribunal, Surguja (Ambikapur) (C.G.) in Central Registration

(Motor Accident Claims Case) No. 283/2015 awarding total compensation of Rs. 224860/- with interest @ 7% per annum from the date of application till realization, fastening liability on the non-applicant No. 2/Insurance Company.

2. As per averment in the claimant petition on 22/04/2015 around 02:00 AM, Avnindra Singh, 62 years of age, was returning towards Ambikapur after attending marriage ceremony with Santosh Prasad Keshari who was driver of Hyundai Car I-10 bearing No. CG15 B 4069. However, on the way near Village Basen, Aamrod Chowki Pasta, P.S. Rajpur District Balrampur (C.G.) non-applicant No.1/ Santosh Prasad Keshari driven Car (offending vehicle) rashly and negligently and lost the control over vehicle and dashed the said Car with Tree. As a result of this accident Avnindra Singh sustained grievous injury and 40% permanent disability caused to the claimant. At the time of accident the offending vehicle was driven & owned by non-applicant No. 1/Santosh Prasad Keshari was also died on the same accident and represented by their legal representatives and insured with Non-applicant No. 2/The Oriental Insurance Co. Ltd.
3. On claim petition being filed by the claimant injured, under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by both the parties passed an award as mentioned above in Para 1 of this judgment. .
4. Learned counsel for the appellant/claimant submits as though he has raised various grounds in this memo of appeal, however, he is not pressed on those grounds and is assailing the award on the following grounds only :-
 - i. that the claimant sustained 40% permanent disability but learned Tribunal has not considered the permanent disability caused to the claimant.
 - ii. that the learned Tribunal has not considered appropriate loss of income, looking to the income of the claimant and

future prospect.

Therefore, it needs to be appreciated evidence looking to the permanent disability to the claimant and documents is taken on record as per Ex. P-67(C) tendered in evidence by the claimant and no any objection raised by the non-applicant on the time of document is taken on record, but learned Tribunal not considered permanent disability. Therefore, it needs to be taken additional evidence regarding the Doctor proving the bills produced before this appellate Court and permanent disability as per Ex. P-67(C). However, if not considered here the matter is remanded back for fresh appreciation of evidence taking the evidence on record.

- iii. that in this appeal also an application under Order 41 Rule 27 of C.P.C. filed for taking additional evidence in document on record I.A. No. 1 and number of bills of treatment of claimant and still now the claimant treated by the Doctor, therefore, the documents needs to be taken on record for the appropriate in just and proper compensation.
 - iv. that the matter may be remanded to the Tribunal for decision afresh in accordance with law.
5. On the other hand learned counsel for respondent No. 2/Insurance Company opposes the contention made by the counsel for the appellant and he submits that documents is in custody when the claim petition is decided by the Tribunal, therefore, the application filed for taking the additional documents on record is dismiss. He further submits that, if that document is taken on record it needs to be verified and contradicted by the Insurance company and required to be produced evidence by the Insurance company rebut that document then that document can be considered on evidence.
 6. Heard learned counsel for the parties and perused the material available on record.

7. Looking to the entire evidence available on record Ex. P-67(C) is disclosing this fact that claimant has sustained 40% permanent disability and all the documents produced before the Appellate Court is required to be appropriately consider for the just and proper compensation, looking to the treatment bills of claimant, therefore, it needs to be remanded back this case for afresh trail. Therefore, the award passed by the learned Tribunal 12/05/2016 is set aside, it is permitted to the claimant/appellant to submit all the documents before the learned Tribunal and respondent have opportunity to file appropriate document before Tribunal and decide afresh looking to the permanent disability caused to the claimant.
8. Keeping in view the pleading of the claimant, the evidence adduced by them in the light of the aforesaid judicial pronouncements, this court is of the opinion that the matter deserves to be remanded to the Tribunal to decide the claim case afresh, after providing sufficient opportunity of hearing to the parties.
9. In the result, the appeal is allowed, the impugned order is set aside and the matter is remanded to the concerned Tribunal to decide the claim petition afresh on its own merits after affording full opportunity of hearing to the parties, as expeditiously as possible preferably within a period of six months from the date of first appearance of the parties in accordance with law. Parties are directed to appear before the concerned Tribunal on 25/07/2019.
10. Needless to mention, the Tribunal shall provide proper and sufficient opportunity to the parties to adduce evidence, to amend the pleadings and to file additional documents, if any.
11. Record of the Tribunal be sent back forthwith.

-Sd/-
(Gautam Chourdiya)
Judge

