

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 397 of 2019**

- Sawant Sethiya S/o Late Birajuram Sethiya Aged About 53 Years R/o Village Jamgaon, P.S. Keshkal District Kondagaon Chhattisgarh.

---Appellant

Versus

1. Shivshankar Yadav S/o Sevak Ram Aged About 26 Years R/o Village Doma Sejbahar P.S. Raipur District Raipur Chhattisgarh. (Driver Of The Vehicle)
2. Khileshwar Prasad Sahu S/o Dhansay Sahu R/o Palud Tekari District Raipur Chhattisgarh. (Owner Of The Vehicle)
3. The Branch Manager, The Reliance General Insurance Company Limited, Shop No. 516 Fifth Floor National Corporation Park Commercial G.E. Road, Raipur Chhattisgarh. (Insurer)

---- Respondents

For Appellant	Shri P.K. Tuslyan, Advocate.
For Respondent No.3	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

05/04/2019

1. This appeal is by the injured/claimant against the award dated 06.10.2018 passed by Additional Motor Accident Claims Tribunal, Kondagaon, C.G. in Claim Case No.78/2017 awarding total compensation of Rs.2,43,506/- with interest @ 6% per annum from the date of application till realization, fastening liability on the Insurance Company along with non-applicant nos.1 & 2 jointly and severally.
2. As per claim petition, on 20.02.2015, injured/claimant Sawant Sethiya, aged about 53 years, earning Rs.6,000/- per month, as

Agriculturist, sustained grievous injuries in the motor vehicular accident caused due to rash and negligent driving of vehicle bearing registration no. CG04-HR-8208 by non-applicant No.1/respondent no.1 resulting into permanent disability to the extent of 50%. At the time of accident, offending vehicle was owned by non-applicant no.2/respondent no.2 and insured with non-applicant no.3/respondent no.3.

3. On claim petition being filed by the claimant/injured under Section 166 of the Motor Vehicles Act for compensation to the tune of Rs.21,50,000/-, the Tribunal considering the evidence led by both the parties passed an award as mentioned above.
4. Learned counsel for the appellant submits that in this case AW-2 Dr. Sidheshwar Prasad Vare was examined by the claimant and he has proved this fact that claimant sustained 50% permanent disability and left half of the body is paralyzed but learned Tribunal ignored this evidence adduced by the claimant and the medical bill. Further, the Tribunal has also erred in not granting any amount towards future prospect, not applying multiplier and not considering any functional disability. Learned counsel for the appellant also filed application under Order 16 Rule 1 of CPC for summoning the Doctor of the Medical Board issuing the disability certificate for exhibiting the same but the said application was rejected by the Tribunal on the ground that it would cause delay in the matter. He submits that the Tribunal was not justified in rejecting the aforesaid application because it would adversely affect the interest of the injured/claimant and would defeat the

very purpose of the Motor Vehicles Act which is benevolent in nature. Therefore, the matter needs to be remanded to the Tribunal for deciding the claim petition afresh after giving due opportunity of hearing and adducing evidence to the parties in accordance with law.

5. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.
6. Heard both the parties and perused the material available on record.
7. It is not disputed that Dr. Sidheshwar Prasad Vare AW-2 was examined by the claimant and he proved this fact that claimant suffered 50% permanent disability and half of the body of the claimant is paralyzed. However, the disability certificate is not exhibited before the Tribunal. When the claimant filed an application under Order 16 Rule 1 of CPC for summoning the said Doctor for exhibiting the disability certificate, the Tribunal rejected the aforesaid application mainly on the ground that it would cause further delay in the matter.
8. Considering the facts and circumstances of the case, the gravity of injuries suffered by the claimant, the unrebutted evidence of AW-2 Dr. Siddheshwar Prasad Vare, who has categorically stated that the claimant suffered 50% permanent disability and half of his body got paralyzed, the benevolent provisions of the Motor

Vehicles Act, this Court is of the opinion that the Tribunal was not justified in rejecting the application filed under Order 16 Rule 1 of CPC by the claimant. The matter needs to be remanded to the Tribunal for decision afresh in accordance with law.

9. In the result, the appeal is allowed, the award impugned is set aside and the matter is remitted back to the concerned Tribunal to decide the claim petition afresh on its own merits, after affording due opportunity of hearing to the parties, as expeditiously as possible, preferably within a period of 6 months from the date of first appearance of the parties. Parties are directed to appear before the concerned Tribunal on 13.05.2019.
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.
12. With the aforesaid observations, the appeal stands disposed of.
It is made clear that nothing in this order shall be construed as an expression of opinion on merits of the case and the Tribunal shall decide the claim petition on its own merits in accordance with law.

Sd/-
Gautam Chourdiya
Judge