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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 257 of 2014

- Harcharan Singh, S/o late Sant Singh Gulati, aged about 49 years, R/o Vasan Gali, near Police Station Kotwali, Korba, Civil and Revenue District Korba (C.G.)

---- Appellant/Claimant

Versus

1. Vikki Singh S/o Madan Singh, aged 40 years, R/o Qr. No. 175/1 Bhanpuri, Raipur, Civil and Revenue District Raipur (C.G.)
Owner of Vehicle No. CG-04/J/4977
(Non-applicant No.1)
2. Tarsen Jit Singh @ Sattte Singh Dhilllo, S/o Avtar Singh Sindhi, R/o near Gurudwara, Korba, Civil and Revenue District Korba (C.G.)
Driver of Vehicle No. CG-04/J/4977
(Non-applicant No.2)
3. Sriram General Insurance Company Limited E-8, E.P.I.P., Riko Industries, Sitapur, Jaipur (Rajasthan)
Insurer of Vehicle No. CG-04/J/4977
(Non-applicant No.3)

---- Respondents

For Appellant	:	Shri Ajay Kumar Chandra, Advocate
For Respondent No.1	:	None
For Respondent No. 2	:	Ms. Uma Sahi, Advocate
For Respondent No. 3	:	Shir Sachin Singh Rajput, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

04.04.2019

1. This is claimant's appeal seeking enhancement of compensation awarded by the Additional Motor Accidents Claims Tribunal, Janjgir, District Janjgir-Champa (C.G.) in Claim Case No. 31/2013 vide award dated 10.12.2013.
2. As against compensation of Rs.16,70,573/- claimed by the Claimant/Appellant by filing claim application under Section 166 of the Motor Vehicles Act, 1988 for the injuries sustained by him in the motor accident on 25.04.2010, the Tribunal has awarded a total sum of Rs.75,000/- as compensation

along with interest @ 9% per annum from the date of application till its actual payment.

3. Facts of the case, in brief, are that on 25.04.2010, the Claimant/Appellant along with his family members was going to Korba by Innova Car bearing registration No. CG-12/R/0638, when they reached Village Seoni near petrol pump, non-applicant No.2- Tarsen Jit Singh @ Satte Singh Dhilllo, driver of the offending vehicle Truck bearing registration No. CG-04/J/4977, owned by non-applicant No.1 and insured with non-applicant No.3, driving the offending vehicle in a rash and negligent manner, dashed the Innova Car. Due to the said accident, the Claimant sustained grievous injuries and as per Ex.-A-29 he suffered 30% permanent disability.

4. Learned counsel for the Claimant/Appellant submits that in this case as per Ex.-A-29, the Claimant suffered 30% permanent disability. Medical treatment papers and medical bills from Ex.-A-16 to Ex.-A-82 have been produced before the Tribunal by the Claimant, but the Tribunal ignoring the all the medical treatment papers, medical bills and permanent disability found in the body of the Claimant as per Ex.-A-29 only awarded compensation of Rs.75,000/- without considering the loss of income, loss of functional disability, future prospect, pain and suffering and medical bills.

5. Learned counsel for Respondent No. 2 supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court.

6. Learned counsel for Respondent No.3 submits that in this case, Doctor has not been examined by the Claimant, therefore, the Tribunal has not considered the medical bills of the Claimant as also the permanent disability certificate (Ex.-A-29) produced by the Claimants.

7. Heard learned counsel for the Appellants and perused the material available on record.

8. It is not disputed by the parties that the Doctor was not examined who has given the permanent disability certificate (Ex.-A-29) and as such, the Insurance Company had no opportunity to cross-examine the Doctor and lead evidence in relation to nature of the disability caused to the Claimant.

9. In instant appeal, accident occurred on 25.04.2010, the Claimant has produced permanent disability certificate (Ex.-A-29) and various other medical bills, but the Tribunal without considering the loss of income of the Claimant, future prospect, only on the basis that the Doctor has not been examined by the Claimant, did not consider the permanent disability of the Claimant.

10. True, the appellant sustained injuries in the motor accident on 25.04.2010 but for the reasons best known to the Appellant/Claimant no doctor was examined before the Tribunal to establish the nature and extent of injuries said to have been sustained by the Appellant/Claimant in the motor accident.

11. The question whether the medical certificate produced by the Claimant before the Tribunal without examining the Doctor who issued the certificate can be relied upon as substantive evidence for the assessment of the compensation came up for consideration before the Apex Court in the case of **A.P. SRTC v. P. Thirupal Reddy**, reported in **(2005) 12 SCC 189**, wherein it was observed in para 6 as under :

“6. After hearing learned counsel for the respondent-claimant who made an attempt to support the order of the High Court, we find that there was no justification for the High Court to rely on the disability certificate issued by Dr. Sudhakar Reddy and enhance the compensation by treating the injury as permanent disability to be 45 per cent. The High Court committed gross error in overlooking the fact that Dr. Sudhakar Reddy's medical certificate was rejected by the Tribunal for non-examination of that doctor. The Tribunal has determined the physical disability at 15 per cent on the basis of the deposition of Dr. K.M. Mitra and awarded a just and fair compensation. The High Court erred in disturbing the same and enhancing the compensation. Consequently, we allow this appeal, set aside the impugned order and restore the award of the Claims Tribunal. The respondent-claimant is allowed to withdraw the amount of compensation awarded by the Tribunal, if it has not already been withdrawn.”

12. The Apex Court in a recent dictum in the case of ***Rajesh Kumar alias Raju v. Yudhvir Singh and another***, reported in **(2008) 7 SCC 305**, reiterated the same view with the following observations in para 11 :

“11. The certificate in question in this case was obtained after two years. It is not known as to whether the Civil Surgeon of the hospital treated the appellant. On what basis, such a certificate was issued two years after the accident took place is not known. The author of the said certificate had not been examined. Unless the author of the certificate examined himself, it was not admissible in evidence. Whether the disability at 60% was calculated on the basis of the provisions of the Workmen’s Compensation Act or otherwise is not known. It is also not known as to whether he was competent to issue such a certificate. It even does not appear that the contentions raised before us had either been raised before the Tribunal or the High Court. The Tribunal as also the High Court, therefore, proceeded on the materials brought on record by the parties. In absence of any contention having been raised in regard to the applicability of the Workmen’s Compensation Act which, in our opinion, ex facie has no application, the same, in our opinion, cannot be permitted to be raised for the first time.”

Therefore, in the facts and circumstances of the case and also keeping in view of the above judicial pronouncements, 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.

13. Considering the facts and circumstances of the case, the nature and quality of evidence adduced by the Claimants, the provisions of the Motor Vehicles Act, the summary nature of trial, the finding so recorded by the Tribunal is not sustainable and this Court is of the opinion that matter needs to be decided afresh on merits within a period of five months by the Tribunal in accordance with law.

14. Accordingly, 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, in the light of observations made hereinabove, after affording full opportunity of hearing to the parties.

15. 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.

16. Records of the Tribunal be sent back forthwith. Parties are directed to appear before the concerned Claims Tribunal on 06th May, 2019.

17. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge

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