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HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 526 of 2021

ICICI Lombard General Insurance Company Limited, Through - Its Legal Officer, Devendra Nagar, Vanijya Bhawan, Ground Floor, Raipur Chhattisgarh.

---- Petitioner

Versus

1. Heeralal Nishad, S/o Shri Dev Singh Nishad, Aged About 27 Years R/o Village Lakhna, Post Sarora, Police Station Neora, District Raipur Chhattisgarh.
2. Bhagwat Das, S/o Ramdas Manikpuri, Aged About 37 Years R/o Village Saddu, Police Station Dharsinwa, District Raipur Chhattisgarh.
3. Ramesh Nishad, S/o Jarhu Nishad, Aged Not Known To The Petitioner, R/o Village Lakhna, Post Sarora, Police Station Neora, District Raipur Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Sourabh Sharma, Advocate
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

05.10.2021

Heard.

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the orders dated 24.8.2021 and 27.3.2021 passed in Claim Case No. 194 of 2018 between Heeralal Nishad vs. Bhagwat Das and Ors. by the First Additional Motor Accident Claims Tribunal, Raipur.
2. It is submitted by counsel for the petitioner that the proceeding in the claim case is at the stage of evidence of the petitioner, who is non-applicant No.3. As the driver/ non-applicant No.1 has not appeared and is being proceeded as *ex-parte*, therefore, the petitioner has been granted permission to defend the case on all grounds that are available

to owner and driver under Section 170 of the Motor Vehicles Act by the order dated 17.3.2020. Copy of the same is filed alongwith the petition. It is submitted that the petitioner filed additional documents and the investigation papers for being taken on record before recording of the evidence of the petitioner/ non-applicant No.3, but the same has been erroneously and arbitrarily rejected by the learned Tribunal. The impugned order is not sustainable. Hence, it is prayed that the petition be admitted and the relief be granted to the petitioner.

3. Considered on the submissions. After perusing all the documents filed alongwith the petition which includes the order-sheets of the claim case, it is found that the petitioner has been granted permission by the learned Tribunal to raise the defence on all grounds that are available to the owner and driver under the provisions of Section 170 of the Motor Vehicles Act, whereas, in the impugned order, reference has been made to Section 149(2) of the Motor Vehicles Act that an Insurance Company can raise defence only in the limit as prescribed under this provision. There is also a mention of delay in filing the present application which is one of the reason for rejecting the application.
4. After considering, I am of this view that once the petitioner has been granted the liberty to raise defence of all grounds available to the owner and driver, the production of additional document by the petitioner/ non-applicant No.3 in that direction was appropriate, although, it was delayed for which some cost may be imposed. Hence, for these reasons, I am of this view that the impugned order is not proper, which is liable to be set aside. The present petition is disposed off.

5. The application filed by the petitioner/ non-applicant No.3 under Order VIII Rule 1A(3) of the CPC is hereby allowed and the documents produced are directed to be taken on record at a cost of Rs.2,000/- which shall be payable to the claimant. Learned Tribunal is also directed to proceed with the case in accordance with law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi