



CF 157

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH

JUDICATURE AT BILASPUR

Division Bench

Misc. Appeal (C) No. 588 2010

APPELLANT
ORIGINAL CLAIMANT

Smt. AJIT KAUR GREWAL
Age - 59 yrs.
W/o. Shri Rajwant Singh Grewal
(Mother of Deceased)
R/o. H.No. 31/331
Infront of Prem Kunj Coloney
Main Road, Civil Lines
RAIPUR (C.G.)

B.R. No. 1708/10
Presented by S.S. Rajput
Dated 14.6.10

VERSUS

RESPONDENTS
ORIGINAL NON APPLICANTS

01. M/s. Geological Survey (P) Ltd.
Through :- Manager,
BHIWANDI
Distt. :- Thane (M.S.)
(Owner :- Truck No. MH-04-CU-4386)
02. Rajesh Nair S/o. Balkrishna Nair
R/o. Shivaji Nagar, MONWARA
Distt. :- Chittalsar
THANE (M.S.)
(Driver :- Truck No. MH-04-CU-4386)
03. I.C.I.C.I. Lombard General
Insurance Company
Through :- Manager Incharge Branch
Distt. :- THANE (M.S.)
(Insurer - Truck No. MH-04-CU-4386)
04. I.C.I.C.I. Lombard General
Insurance Company
Through :- Branch Manager
Lalganga Shopping Mall, G.E. Road
RAIPUR (C.G.)

✓ Praveen

05. M/s. Grewal Cement Pipe Industries

Through :- Managing Partner

House No. 31/331, Opp. Premkunj

Civil lines, RAIPUR (C.G.)

(Regd. Owner :- Car Ford Fiesta

No. CG-04-ZX-5544)

DONDI LOHARA

Distt. Durg (C.G.)

(Driver of Qualis Toyota Car

No. CG-08-5183)

06. The New India Assurance Co. Ltd.

Through :- Branch Manager,

B.O. Code No. 450301, IInd Floor

R.D.A. Building, Bajrang Market

RAIPUR (C.G.)

(Insurance Company of Ford Fiesta

No. CG-04-ZX-5544)

DATE OF ACCIDENT

25.07.2007

MEMORANDUM OF APPEAL UNDER SECTION 173 OF

THE MOTOR VEHICLE ACT 1988

THE AWARD IS PASSED BY THE NINTH ADDITIONAL

MOTOR ACCIDENT CLAIMS TRIBUNAL RAIPUR (C.G.)

ON 17.02.2010 PRESIDED BY SHRI O.P. GUPTA



(21)

HIGH COURT OF CHHATTISGARH AT BILASPUR

**DIVISION BENCH: HON'BLE MR. I.M.QUDDUSI &
HON'BLE MR. G. MINHAJUDDIN, JJ.**

M.A.(c) No. 588/2010

Appellant
Original Claimant

Smt. Ajit Kaur Grewal

Vs

Respondents
Original **Non**
Applicants

M/s Geological Survey (P) Ltd. and
others

Present:

Mr. SS Rajput, counsel for the appellant.
Mr. Sourabh Sharma, counsel for respondent No.4.
Mr. SK Tiwari, counsel for respondent No.5.
Mr. Anand Gupta, counsel for respondent No.6.

ORDER (Oral)
(30th September, 2011)

Per I.M. Quddusi, J

This appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 by the appellant/claimant against the award of the 9th Additional Motor Accident Claims Tribunal (FTC), Raipur (in short 'the Tribunal') dated 17.2.2010 passed in Claim Case No.204/09, dismissing the claim petition of the claimant.

2. Brief facts of the case are that Rishiraj Singh, who was engaged in the business of transport and was partner of M/s Baster Cement Product and M/s Engineering Enterprises, on 25.7.2007 at about 12.30 in the night was coming to Durg from Raipur by driving the car. At that time, all of a sudden some cattle came in front of the car of Rishiraj near Bhawani Petrol Pump, Royal Daba, Kumhari, and while he was trying to save the cattle, the car overturned and was hit by the truck, which was coming from opposing direction in high speed. On account of the said accident, Rishiraj sustained fatal injuries and consequently, succumbed to the same. Report of the accident was lodged at Police Station – Kumhari under Cr.No.168/07. At the time of accident, the deceased was 27 years of age and was earning more than Rs.6 lac per year by doing his own business. The claimant, who is mother of the deceased, being his legal heir/dependent, filed a claim petition



under Section 166 & 140 of the Motor Vehicles Act, 1988 (in short "the Act, 1988"), and claimed a total compensation of Rs.55,00,000/- under various heads.

3. However, learned Tribunal, after close scrutiny of the evidence adduced by the parties before it, by the impugned award dismissed the claim petition of the claimant.

4. We have heard learned counsel for the parties, perused the LCR as also the impugned award.

5. The offending vehicle i.e. truck was bearing registration No.MH-04CU-4386, which collided with the car Ford Fiesta bearing registration No.CG-04-ZX-5544. But in the impugned award, issue No.1 has been framed mentioning a different vehicle number i.e. CG-17-H-7735 and motorcycle bearing No.CG-05-CY-7735. Further, the findings in the impugned award have been given without perusing the spot map, which was not available and therefore, the claims Tribunal should have summoned the police record or the criminal case record to ascertain the fact.

6. Sections 168 and 169 of the Act and Rule 226 of the CG Motor Vehicles Rules, 1994 provide that the Tribunal shall conduct an enquiry for ascertaining the truth and determining the just compensation. However, in the instant case, the findings have not been given by the claims Tribunal properly in the absence of consideration of the material evidence, which were liable to be considered as mentioned above. Therefore, we are of the opinion that the Tribunal was not justified in treating the claim petition as a civil suit and deciding the same only on the basis of pleadings or the evidence adduced by the parties.

7. Further in ***Raj Kumar -vs- Ajay Kumar and another*** decided on 18th October, 2010 and reported in ***IV (2010) Accident & Compensation Cases 815 (SC)*** Hon'ble the Apex Court laid down vide para 11 as under:

11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability.



Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an inquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'.

While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of

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permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

8. Therefore, in view of the above, we are of the opinion that the matter requires reconsideration at the end of the Tribunal.

9. In the result, the appeal is allowed in part. The impugned award as well as the findings recorded therein, are hereby set aside and the matter is remitted back to the Tribunal for decision afresh in view of the observations made herein above.

10. Needless to mention that the parties shall be allowed to amend the pleadings, adduce further evidence, file documents or get the documents verified etc., and thereafter decision shall be taken afresh. The Tribunal shall conduct an enquiry, as contemplated under Sections 168, 169 of the Act, 1988 and Rule 226 of the CG Motor Vehicle Rules, 1994 for ascertaining the truth and determining the just compensation.

11. The parties shall appear before the Claims Tribunal on 22nd November, 2011. The LCR shall be sent back to the claims Tribunal without further delay.

No order as to costs.

Sd/-
I.M. Quddusi
Judge

Sd/-
G. Minhajuddin
Judge