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BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

MISC. APPEAL (Claim) NO. 356 /2013

APPELLANT : Yashwant Sen, S/o Late Keshav Sen, aged about 24 years, R/o Fafadih, near Sai Temple, Police Station Devendra Nagar, Raipur, Tahsil and District Raipur (C.G.)

VERSUS

RESPONDENTS : 1. Ibrahim Khan, S/o Bismillah Khan, aged about 52 years, R/o Raja Talab, new Nurani Chowk, Police Station Civil Lines, Raipur, District Raipur (C.G.)

..... ***Driver of Bus No. CG-07/E-5002***

2. Manish Travels, G.E. Road, Durg, District Durg (C.G.)

..... ***Owner of Bus No. CG-07/E-5002***

3. The Oriental Insurance Company Limited, through its Board Manager, Office No. 1, Kutchheri Chowk, Jail Road, Raipur, District Raipur (C.G.)

..... ***Insurer of Bus No. CG-07/E-5002***

MISCELLANEOUS APPEAL UNDER SECTION 173 OF THE
MOTOR VEHICLES ACT, 1988

.R.No. MAC 356/13
Presented by Sh. H.K. Gupta
dated 03.4.13



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HIGH COURT OF CHHATTISGARH, BILAPUR

(Single Bench: Hon'ble Mr. T.P. Sharma, J)

M.A. [C] No.356/2013

Appellant

Yashwant Sen

Vs

Respondent

1. Ibrahim Khan
2. Manish Travels
3. The Oriental Insurance Company Ltd.

Present:

Mr. R.K. Gupta, Advocate for the appellant.

Mr. Sudhir Agrawal, Advocate for the respondent No.3.

Other respondents not noticed.

ORDER

(30th August, 2013)

1. Heard on I.A. No.1, for condonation of delay in filing the appeal.
2. This appeal has been filed after 159 days of limitation.
3. On due consideration, the application is allowed. Delay in filing the appeal is hereby condoned.
4. Also heard on admission.
5. Appeal is admitted for hearing.
6. By this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') the appellant has prayed for enhancement of compensation of Rs.28,253/- awarded by the 7th Additional Motor Accident Claims, Raipur (for short 'the Claims Tribunal') vide award dated 19.7.2012 passed in Claim Case No.202/11 on account of grievous injuries suffered by the appellant in a motor accident.
7. Learned counsel for the appellant submits that the appellant has received grievous injuries resulting into permanent disability of leg to the extent of 40%. Certificate of Medical Board was not available with the appellant and the same could be obtained by him only on 21.1.2013 i.e. after passing of the impugned award. The appellant is Barber and running a barber shop and on account of disability, especially shortening of leg, he is not in a position to discharge his duty properly, therefore, his income, especially future income, has been affected which has not been considered by the Claims Tribunal.



8. On the other hand, learned counsel for the respondents opposed the appeal.
9. As per evidence and record of the Claims Tribunal, on account of fracture of thigh bone surgery has been conducted which shows gravity of injury and treatment required. Copy of disability certificate issued by the Medical Board has also been filed along with application under Order 41 Rule 27 of the CPC.
10. In the light of aforesaid submissions on behalf of learned counsel for the appellant that loss of future income has not been considered by the Claims Tribunal and also in the light of subsequent disability certificate, the case requires reconsideration at the end of Claims Tribunal.
11. Consequently, the appeal is partly allowed, impugned award is set aside and the matter is remitted back to the Claims Tribunal for taking decision afresh after providing opportunity to both the parties to adduce further evidence and amend the pleadings. The parties shall remain in attendance before the Claims Tribunal on 26.09.2013. No order as to costs.
12. Certified copy as per rules.

Sd/-
T.P. Sharma
Judge