

Party Name : SUKANTA DAS Vs DIPAK CH DAS & ANR

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

While disposing of MFA(W/C) 15 of 2009 this Court had observed as follows :

"3. At the outset I am shocked by the manner in which Dr. Swarajit Debbarma who at the relevant time was only an MBBS with Diploma in Orthopedics and was working as Senior Resident in the G B. P. Hospital at Agartala has virtually set aside the disability certificate issued by the special medical board for physically handicapped persons wherein the extent of disability of the claimant has been assessed at 25%. The manner in which Dr. Swarajit Debbarma has testified in the case does not speak well of a qualified doctor. He has stated that on being shown the disability certificate he has come to the conclusion that the claimant cannot drive the vehicle at least for five years. Thereafter he may drive the vehicle. In cross-examination, he stated that he could not remember whether Sukanta Das was ever treated by him on any occasion.

4. An expert is an expert either by the nature of his qualifications in which event he must show that he is a highly qualified person who is able to comment or contradict the opinion of other highly qualified medical person or he should be a medial expert who has treated the patient or has issued the medical certificate and, therefore, can testify in this background. Otherwise we will reach a situation where medical officers may be paid any amount to testify whatever they want to in favour of the claimant.

5. I am not inclined to accept the statement of Dr. Debbarma because he had never treated the claimant nor had he issued the disability certificate and in rank he is much lower officer than those who issued the medical disability certificate. The learned Commissioner was fully justified in assessing the compensation by taking the disability at 25% and I fully agree with the same. The appeal is, accordingly, dismissed.

6. Before parting with the appeal it is directed that notice be issued to Dr. Swarajit Debbarma, S/o Late Sri Jitendra Debbarma, Agartala Government Medical College and G.B.P. Hospital, Agartala to appear before this Court on 28th April, 2015 to explain under what circumstances he appeared as a witness in this case because as per the record, he neither treated the claimant nor did he issue the disability certificate. Before referring the matter to the disciplinary authorities or to a criminal Court for taking action in accordance with law, I feel it proper to first hear Dr. Swarajit Debbarma."

Today when questioned Dr. Swarajit Debbarma stated that he was not summoned by Court but the Director, Health Services had issued a written order to him to appear in Court. According to him, such order was issued in the year 2009 and he cannot produce the same. In future it is made clear that a doctor should not appear in Court unless there is a Court order or he should while appearing in Court produce the order in writing issued by the superior authority directing him to appear in Court.

As noted by this Court in the judgment at the relevant time Dr. Swarajit Debbarma was only an M.B.B.S with diploma in orthopedics. He could by no stretch of imagination be called an expert. He, however, started explaining the disability certificate in a manner which is not written in the disability certificate. In any event, at this stage it is impossible to verify the fact whether he was directed by the Director, Health Services to attend Court or not. However, for the future following directions are given :

(i) That the Court while issuing summons to any medical officer must ensure that the notices are issued only to a doctor who has treated the patient or who has issued the disability certificate or to a doctor who has issued the discharge certificate.

(ii) In case any doctor who has treated the patient is not available then only the opinion of an expert may be sought.

(iii) If the opinion of an expert is required then the expert must be at least a post graduate in medicine or surgery and he must be a specialist in the subject concerned and must be senior to the persons who issued the disability certificate and the discharge certificate. A 'Senior Resident' by no stretch of imagination can be termed an expert to sit over the opinion of the disability board.

Dr. Debbarma is asked to be careful in future and the matter is closed but he is warned that if in future it is brought to the notice of this Court that he has appeared as a witness in a case with which he has no connection then severe action shall be taken against him.