

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

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**FAO No. 3739 of 2003 (O & M)  
Date of decision : 30.11.2015**

**Ram Kumar**

**.....Appellant**

**v.**

**Yoginder Singh Rana and others**

**.....Respondents**

**CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present : Mr. Vivek Suri, Advocate, for the appellant

Mr. J.S. Cooner, Advocate, for respondents No.1 and 2

Mr. Vinod Gupta, Advocate, for the respondent-Insurance Company

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**Ramendra Jain, J. (Oral)**

By way of an application under Order 41 Rule 27 read with Section 151 of the CPC, the applicant-appellant has sought production of Annexures A-1 to A-3 by way of additional evidence.

It is averred that the applicant-appellant had suffered 60% permanent disability, due to loss of his sight. He has handed over the aforesaid documents, pertaining to his treatment, to his near relative, in order to hand over the same to his counsel at Panchkula. Under the bona fide belief, he did not enquire from his counsel about the receipt of the aforesaid documents, but when contacted his counsel on passing of award, he came to know that medical evidence had not been produced before the learned Tribunal in order to establish the injuries suffered by him. Thereafter, the applicant-appellant immediately contacted his relative to enquire about the non handing over of documents to his

counsel who cut sorry figure. The application is supported by an affidavit.

However, no reply has been filed by the respondent-Insurance Company. Learned counsel has made only oral submissions.

Heard.

Annexures A-1 to A-3, sought to be produced by way of additional evidence consist "Out Patient Tickets" and "Medical Treatment Record" of the applicant-appellant mentioning the dates of his admission and discharge. The learned Tribunal has observed that no treatment record of any doctor was produced on record by the claimant. Even disability certificate Ex.P-1 was not got proved by examining its author. Considering the above factors, the learned Tribunal awarded only a meager amount of ₹ 30,000/- as compensation to the applicant-appellant vide impugned award dated 2.6.2003.

In the instant case, the applicant-appellant has suffered 60% disability vide disability certificate Ex.P-1, though it is yet to be proved that whether, it is permanent or temporary in nature. However, he cannot be penalised for the negligence of his relative, to whom he allegedly had handed over the above documents Annexures P-1 to P-3 to further deliver the same to his counsel. By this time, it is well settled that no person should be non-suited on technical reasons. In the interest of justice, it is desirable to allow the application for additional evidence and to permit the applicant-appellant to produce Annexures A-1 to A-3 by way of additional evidence to co-relate his injury shown in disability certificate Ex.P-1. The application is allowed. Annexures A-1 to A-3 are exhibited as Ex.P-28 to P-30. The case is remanded back to the learned Tribunal to decide the case afresh considering the Ex.P-28 to P-30.

Learned counsel for the applicant-appellant has made oral request to also allow him to lead evidence qua disability certificate Ex.P-1 to prove that 60% disability shown therein is of permanent nature.

Since the case has been ordered to be remanded back to the learned Tribunal, therefore, the aforesaid oral request of learned counsel for the applicant-appellant is allowed. The learned Tribunal shall pass a fresh award after affording proper opportunities to both the side, at the earliest, preferably within three months.

Since the claim petition has been contested negligently by the applicant-appellant, therefore, he is held not entitled for interest from 2.6.2003 i.e. the date, when the impugned award was passed till the date of the fresh award. Needless to mention here that the amount already paid to the applicant-appellant by the Insurance Company shall be adjusted.

Both the parties are directed to appear before the learned Tribunal, Panchkula on 15.12.2015. Copy of this order along with Ex.P-28 to P-30 and lower Court record be send to the learned Tribunal well in time.

In case, the applicant-appellant does not appear before the learned Tribunal on the date fixed, this order shall be deemed to have been recalled and in case, the Insurance Company does not appear, it would be proceeded ex parte.

The appeal stands disposed of.

**(RAMENDRA JAIN)**  
**JUDGE**

**30.11.2015**  
*Ashwani*