

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 730 OF 2017

SWAPNALI SWAPNESH DESSAI AND 2
ORS.,

... Petitioners

Versus

GOVERDAN PAGUI AND ANR.,

... Respondents

Adv. Pranay A Kamat for the Petitioners.

Adv. Amey Jagdish Sinai Kakodkar for Respondent no. 2.

Coram:- C. V. BHADANG, J.

Date:- 11th October 2017

Oral Order:

On 14/8/2017 a notice for final disposal was issued in this petition. I have heard the learned counsel for the petitioners and the learned counsel appearing for second respondent. None appears for the respondent no.1. The petition is being disposed off finally.

2. The petitioners, who are the claimants before the Motor Accidents Claims Tribunal at Margao (Tribunal for short) in Claim petition no.53/2015 are challenging the order dated 22/2/2017 passed by the Presiding Officer of the Tribunal thereby refusing permission to produce secondary evidence in respect of certain pharmacy bills.

3. It is submitted by the learned counsel for the petitioners that the bills were handed over by the petitioner no.1 to her brother-in-law, who has misplaced the same. It is submitted that the Tribunal had conducted an inquiry in which the petitioners along with some other witnesses came to be examined. It is submitted that strict rules of evidence and procedure do not apply to the Claims petition before the Tribunal. In so far as the absence of statement that the petitioners have not produced the medical bills before the authority/forum, the learned counsel, on instructions, states that the petitioners have not produced the said bills and have not made any other claim before any other authority/forum. He submits that the evidence of the petitioners in the petition is yet to be recorded and the petitioners undertake to incorporate the said statement in the evidence.

4. On the contrary, it is submitted by Shri Kakodkar, the learned counsel for the second respondent that the Tribunal has rightly found that the brother-in-law of the petitioner no.1 to whom the bills were allegedly handed over and who has misplaced them has not been examined. Secondly, it is contended that the petitioner has also not made any statement that she has not made any claim or produced the bills before any other authority/forum. It is submitted that this Court may not interfere with the impugned order which is otherwise well reasoned, in the exercise of the supervisory jurisdiction of this Court.

5. I have carefully considered the rival circumstances and the submissions made. At the outset, it is necessary to note that strict rules as contained in the Evidence Act are not applicable to the proceedings before the Tribunal. The Tribunal constituted under the Motor Vehicles Act, has to determine just compensation payable on the basis of the inquiry made in accordance with Section 166 of the Act and the rules framed there under. The only apprehension and the anxiety of the Tribunal appears to be about the possibility of the petitioners having produced the original bills in some other claim and the petitioners trying to take double advantage of the amount as reflected in the bills. For this purpose the Tribunal conducted an independent inquiry in which the petitioner along with AW.2, Ms. Hazel Louis, who is a pharmacist at Apollo Victor Hospital, Margao and AW.3, Shri Ravikiran Pawaskar, Principal of I.T.I, Canacona who had attested the bills were examined. After the said inquiry the Tribunal has passed the impugned order mainly on the ground that the petitioners have not examined the brother-in-law of the petitioner no.1 and secondly, the petitioner no.1 has not made a "categorical statement" on affidavit that she has not produced the medical bills before any other authority/forum. In my considered view the Tribunal has failed to appreciate that strict rules of Evidence do not apply to the proceedings before the Tribunal. Nonetheless the Tribunal has conducted an inquiry in which the

petitioners had produced the concerned pharmacist as well as the Principal of I.T.I who had attested the bills as witness. In so far as the absence of the statement about production of the bills before any other authority/forum is concerned, the learned counsel for the petitioners has made a specific statement that no such claim is made. The learned counsel for the petitioners further states that the petitioners shall incorporate a specific statement in this regard during the course of the evidence. In such circumstances in my considered view the production of the documents by way secondary evidence needs to be allowed. This shall be subject to proof of bills in accordance with law. The petition is accordingly allowed. The impugned order is hereby set aside. Application for production of secondary evidence is hereby allowed. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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