

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No.23 of 2018

Ku.Mohini Bhoi D/o Shri Dharam Singh Bhoi, aged about 20 years, R/o village Paterapali, Ward No.5, Thana & Tahsil Saraypali, Civil & Revenue District Mahasamund (C.G.).

---Appellant

Versus

1. Raja Sahu S/o Shri Nawlal Sahu, aged about 21 years, R/o In front of Hardevlal Mandir Sudama Nagar Raipur, Thana Tikrapara, District Raipur (C.G.).
2. Divisional Manager, United India General Insurance Company Limited, Krishna Complex, Near Kachahari Chowk, Raipur, Civil & Revenue District, Raipur (C.G.).

---Respondents

For the appellant : Shri Sumit Shrivastava, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/01/2018

1. Present is an appeal filed by the claimant under Section 173 of the Motor Vehicles Act challenging the award dated 09/11/2017 passed by the learned Additional Motor Accident Claims Tribunal, Saraypali, District Mahasamund in Motor Accident Claim Case No.18/2016.
2. Vide the said impugned award, the Tribunal in an injury case has awarded a compensation of Rs.1,84,454/- with interest @ 6% per annum from the date of application.
3. The counsel for the appellant submits that, it is a case where the claimant had suffered disability of 45%, but the Tribunal has not awarded any compensation in this regard and only awards a compensation towards medical expenses, pain and suffering, special diet and loss of income for four months.

4. Perusal of record would show that, the claimant in the instant case though had produced their disability certificate issued by the concerned Medical Board, but the same was not proved by the member of Medical Board or from the doctor who had treated the claimant.

5. At this juncture, the counsel for the appellant referring to the judgment of **“Raj Kumar vs. Ajay Kumar and Another”**, reported in (2011) 1 SCC 343 submits that, the claimant may be given an opportunity to produce the evidence of the doctor before the Tribunal and for which the matter may be remitted back for proving the disability part. He further submits that, the claimant in the instant case is an unmarried girl and she was facing difficulties in getting the doctor examined by calling upon the doctor before the Court below and therefore prays that she may also be permitted to get the doctor examined on commission and for which she may move an appropriate application before the Tribunal.

6. Considering the entire facts and circumstances of the case, so also taking note of fact that the the provisions of Section 166 of the Motor Vehicles Act coupled is a liberal piece of legislation, the interest of the claimant should be protected as far as possible and that the Tribunal also should have taken a pragmatic approach and should have suo moto instructed the claimant to get the doctor examined so that the claimant would not be put to loss. He could himself have suggested for examination of the doctor on commission.

7. Accordingly, this Court is of the opinion that, ends of justice would meet if the impugned award dated 09/11/2017 is set aside and the matter is

remitted back to the Court below directing the appellant to enter appearance before the Tribunal on 28/02/2018 and that the Tribunal shall provide another opportunity to the claimant permitting her to lead evidence to establish the disability part. The claimant shall also have the liberty of getting the doctor examined on commission if an appropriate application in this regard is moved by her.

8. With the aforesaid direction, the appeal stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit