

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 247 of 2014**

1. Sukh Lal S/o. Budhai Ram, aged about 50 years, Caste: Cherva, R/o Village- Kudargarh, Police Station & Tahsil- Odgi, Revenue and Civil District- Surajpur (C.G.).

---- Appellant**Versus**

1. The Oriental Insurance Company Ltd., Through: Branch Manager, Oriental Insurance Company Ltd., Branch: Ambikapur, Ambedkar Chowk, Ambikapur, District: Surguja (C.G.).
2. Deewakar Prasad Jaiswal S/o Ghanshyam Jaiswal, aged bout: 38 years, R/o Village: Dhur, Police Station & Tahsil : Odgi, Revenue and Civil District : Surajpur (C.G.).
3. Kapoor Chand Gupta S/o Rampal Gupta, aged about 34 years, R/o Village : Dhur, Police Station & Tahsil : Odgi, Revenue and Civil District: Surajpur(C.G.).

---- Respondents

For Appellant	:	Ms. Laxmin Kasyap, Advocate on behalf of Shri P. K. Patel, Advocate
For Respondent No. 1	:	Shri Pallav Mishra, Advocate
For Respondent No. 2&3	:	None

Hon'ble Shri Justice Gautam Chourdiya
Order on Board

03.10.2018

1. This is claimant's appeal seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Surajpur (for short 'the Tribunal'), District Surguja in claim case No. 363/2011 vide award dated 19.02.2014.
2. Facts of the case leading to filing of claim petition are that on the

fateful day i.e. 21.04.2011, appellant/claimant is going to kudargarh from Dongargarh being seated over the Mahendra Bolero bearing registration No. CG 15-B/4433 when he reached near the village Tara under the jurisdiction of Police Station Tara, Main road at that time respondent No. 3 (driver of the offending vehicle) by driving rashly & negligently, took the accident, due to which appellant sustained grievous injuries on his head solder and ear and his right ear is cut and fall into the earth.

3. As against the compensation of Rs.2,20,000/- claimed by the appellant/claimant by filing claim petition under Section 166 of the Motor Vehicles Act for the injuries sustained by him in the motor accident on 21.04.2011 by offending Mahindra Bolero bearing registration No. C.G. 15-B /4433, learned Tribunal has awarded compensation of Rs.25,000/- along with interest @ 8 % per annum from the date of filing of claim petition till its actual payment.

4. Learned Tribunal, on a close scrutiny of the entire evidence led before it held that the accident has occurred due to rash and negligent driving of Mahindra Bolero bearing registration No. C.G. 15-B /4433 by its driver i.e. respondent No.3 –Kapoor Chand Gupta; awarded aforesaid amount of compensation to the appellant/claimant.

5. Learned counsel appearing for the appellant would submit that although the appellant has not examined the doctor to prove the injuries sustained by him in the accident, however, the learned Tribunal has fallen in error in awarding low amount of compensation of Rs.25,000/- only.

6. I have heard the learned counsel appearing for the appellant and

perused the award impugned.

7. The Supreme Court in case of ***A.P. SRTC v. P. Thirupal Reddy***, reported in **(2005) 12 SCC-189**, observed in para 6 as under:

“6.After hearing learned counsel for the respondent-claimant who made an attempt to support the order of the High Court. We find that there was no justification for the High Court to rely on the disability certificate issued by Dr. Sudhakar Reddy and enhance the compensation by treating the injury as permanent disability to be 45 per cent. The High Court committed gross error in overlooking the fact that Dr. Sudhakar Reddy’s medical certificate was rejected by the Tribunal for non-examination of that doctor. The Tribunal has determined the physical disability at 15 per cent on the basis of the deposition of Dr. K.M. Mitra and awarded a just and fair compensation. The High Court erred in disturbing the same and enhancing the compensation. Consequently, we allow this appeal, set aside the impugned order and restore the award of the Claims Tribunal. The respondent-claimant is allowed to withdraw the amount of compensation awarded by the Tribunal, if it has not already been withdrawn.”

8. The Supreme Court in a dictum in case of ***Rajesh Kumar alias Raju v. Yudhvir Singh and another***, reported in **(2008) 7 SCC 305**, reiterated the same view with the following observations in para 11:

“11.The certificate in question in this case was obtained after two years. It is not known as to whether the Civil Surgeon of the hospital treated the appellant. On what basis, such a certificate was issued two years after the accident took place is not known. The author of the said certificate had not been examined. Unless the author of the certificate examined himself, it was not admissible in evidence. Whether the disability at 60% was calculated on the basis of the provisions of the Workmen’s Compensation Act or otherwise is not known. It is also not known as to whether he was competent to issue such a certificate. It even does not appear that the contentions raised before us had either been raised before the Tribunal or the High Court. The Tribunal as also the High Court, therefore, proceeded on the materials brought on record by the parties. In absence of any contention having been raised in regard to the applicability of the Workmen’s Compensation Act which, in our opinion, ex facie has no application, the same, in our opinion, cannot be permitted to be raised for the first time.”

9. Division Bench of this High Court in case of MA No. 850/2001, ***Pradeep Kumar Sahu vs. Sarupa Sahu & another*** vide order dated 31st March, 2009, placing its reliance upon the dicta of Supreme Court in the cases referred above held in para 8 as under:

“8. In view of the above quoted dicta of the Apex Court in the cases of ***A.P. SRTC v. P. Thirupal Reddy (supra)*** and ***Rajesh Kumar alias Raju v. Yudhvir Singh and another (supra)***, the certificate produced before the Tribunal in the absence of examination of the Doctor issuing the certificate is neither admissible in evidence nor can be taken into consideration as substantive evidence for assessment of the compensation in the case.”

10. Admittedly, the claimant in his own wisdom did not examine Doctor to prove the injury sustained in the accident and to prove the resultant loss. In view of the dicta of the above referred cases, the injury reports, certificates produced, in the absence of examination of the Doctor issuing the injury reports, certificates are neither admissible in evidence nor can be taken into consideration as substantive evidence for enhancement of compensation in the case.

11. For the reasons mentioned hereinabove, I do not find any scope for enhancement of the compensation awarded by the Tribunal.

12. The appeal filed by the appellant for enhancement of the compensation is therefore liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge

