

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No.86 of 2018

Sukhram Dhirhi S/o Ramlal, age 36 years, Cast-Satnami, Occupation-Carpenter, R/o village Daokijor, Tahsil Sarangarh, District Raigarh (C.G.) (Claimant).

---Appellant

Versus

1. Mustak Khan S/o Zahur Khan, aged about 45 years, R/o village-Bulbulnebaz, P.S. & Tahsil Risiya, District Behraich (U.P.) (Driver).
2. Manish Kumar Singh S/o Balram Singh, R/o H124 Udhab Residency, near Lilisa kutiya Meghpar, Berichi (G.J.)(Owner).
3. Iffco Tokio General Insurance Comp. Ltd., C1 District Center Saket, New Delhi Pin-110017, Regional Office-Iffco Tokio General Insurance Comp.Ltd. Gaurishankar, Mandir Road, Itwari Bazar, Raigarh, Tahsil and District Raigarh (C.G.).

---Respondents

For the appellant/claimant : Ms. Sharmila Shinghai, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/01/2018

1. Present is an appeal filed by the claimant under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 28/09/2017 passed by the learned Additional Motor Accident Claims Tribunal, Sarangarh, District Raigarh (C.G.) in Motor Accident Claim Case No. 06/2016.
2. Vide the said impugned award, the Tribunal in an injury case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.4,12,706/- with interest @ 6% per annum from the date of application.

3. The counsel for the appellant submits that, of the total amount awarded by the Tribunal, Rs.3,22,262/- is towards medical expenses incurred by the claimant. She further submits that, the claimant has not been sufficiently compensated for the disability that he has got. It was further contended that, they have not been provided sufficient opportunity to prove the disability by leading evidence of any medical expert or doctor and therefore, she makes a prayer for remanding the matter back so that she may examine the doctor to prove the disability part. She further submits that the fact that the claimant has incurred medical expenses of more than Rs.3,20,000/- itself shows the gravity of the injuries. She further contended that, the claimant was a carpenter by profession and as also being operated on two occasions for sustained fracture injuries on his right leg so also on his right hand he has not been able to discharge the nature of his profession as he was doing prior to the accident.

4. Given the facts and circumstances of the case, this Court finds it proper to quote the judgment of the Hon'ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar & Anr [2011 1 SCC 343]** wherein the Supreme Court in paragraph 22 and 23 has held as under:

“22. We may in this context refer to the difficulties faced by claimants in securing the presence of busy Surgeons or treating Doctors who treated them, for giving evidence. Most of them are reluctant to appear before Tribunals for obvious reasons either because their entire day is likely to be wasted in attending the Tribunal to give evidence in a single case or because they are not shown any priority in recording evidence or because the claim petition is filed at a place far away from the place where the treatment was given. Many a time, the claimants are reluctant to take coercive steps for summoning the Doctors who treated them, out of respect and gratitude towards them or for fear that if forced to come against their

wishes, they may give evidence which may not be very favorable. This forces the injured claimants to approach 'professional' certificate givers whose evidence most of the time is found to be not satisfactory.

23. The Tribunals should realize that a busy Surgeon may be able to save ten lives or perform twenty surgeries in the time he spends to attend the Tribunal to give evidence in one accident case. Many busy Surgeons refuse to treat medico-legal cases out of apprehension that their practice and their current patients will suffer, if they have to spend their days in Tribunals giving evidence about past patients. The solution does not lie in coercing the Doctors to attend the Tribunal to give evidence. The solution lies in recognizing the valuable time of Doctors and accommodating them. Firstly, efforts should be made to record the evidence of the treating Doctors on commission, after ascertaining their convenient timings. Secondly, if the Doctors attend the Tribunal for giving evidence, their evidence may be recorded without delay, ensuring that they are not required to wait. Thirdly, the Doctors may be given specific time for attending the Tribunal for giving evidence instead of requiring them to come at 10.30 A.M. or 11.00 A.M. and wait in the Court Hall. Fourthly, in cases where the certificates are not contested by the respondents, they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the availability of expert evidence, will ensure assessment of just compensation and will go a long way in demonstrating that Courts/Tribunals show concern for litigants and witnesses.”

5. In view of the aforesaid judgment of the Supreme Court, this Court is of the opinion that, ends of justice would meet if the matter is remanded back to the Tribunal for a fresh adjudication after giving an opportunity to the appellant to examine the doctor and get the disability part proved. If required, the claimant can also move an application for getting the doctor examined on commission.

6. The impugned order thus stands set aside and the matter stands remitted back to the Tribunal for a fresh adjudication. The appellant is directed to appear before the Tribunal on 15/02/2018.

7. It is expected that, the Tribunal shall try to dispose off the matter as expeditiously as possible.

8. Accordingly, the appeal stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit