

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 129 of 2018

Owlesh Reddy S/o Shankhruru Reddy, aged about 19 years, R/o Sarda Colony Gaurela, P.S.Guarela, District Bilaspur (C.G.).

---Appellant

Versus

1. Premlal Panika S/o Ramprasad Panika, aged about 35 years, Occupation Driver, R/o village Daojara, P.S.Guarela, Tahsil Pendra, District Bilaspur (C.G.) (Driver).
2. Gopalkrishna Agrawal S/o Fakirchand Agrawal, R/o Samta Nagar Gaurela, P.S.Guarela, District Bilaspur (C.G.) (Owner).
3. The Oriental Insurance Company Limited, Division Office, 1st Floor, Rama Trade Centre, Rajeev Plaza, Near Old Bus Stand, District Bilaspur (C.G.) (Insurer).

---Respondents

For the appellant : Shri Manish Thakur, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/01/2018

1. Present is an appeal filed by the claimant under Section 173 of the Motor Vehicles Act, 1988 assailing the award dated 09/11/2017 passed by the learned Additional Motor Accident Claims Tribunal, Pendra Road, District Bilaspur (C.G.) in Motor Accident Claim Case No. 27/2012.
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.13,700/- with interest @ 6% per annum from the date of application.

3. The counsel for the appellant submits that, the claimant in the instant case met with an accidental injuries on 07/11/2017 when he was hit by a pickup van bearing registration No. CG-10-A-1837, driven by the respondent No.1, owned by the respondent No.2 and duly insured by the respondent No.3/Insurance Company. As a result of the said accident, the claimant in the instant case had received grievous injuries in as much as his right leg sustained compound fracture and he was hospitalized for a considerable period of time and that he had also to be operated upon where steel rods had to be inserted for his treatment. He further submits that, in spite of all these, the Tribunal has awarded a compensation of only Rs.13,700/- which is too meagre an amount considering the nature of injuries which has been sustained by the claimant. He further submits that, it is a case where during the proceedings before the Court below, the treatment was continuing and that the claimant in the instant case was not able to produce any evidence of the doctor with which the treatment part, so also, the disability part could have been proved. He further submits that, the claimant may be granted one last opportunity so that he can lead sufficient evidence before the Tribunal to substantiate the treatment as well as the disability part and prayed for the matter to be remitted back, so that the claimant can be suitably compensated.

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 passing a fresh award after giving another opportunity to the claimant to lead evidence.

7. Accordingly, the appeal stands disposed off.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE