

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 1257 of 2011

1. Rajendra Prasad Mishra S/o Vasudeo Prasad Mishra, aged about 76 years.
 2. Smt.Membai Mishra W/o Rajendra Prasad Mishra, aged about 57 years.
 3. Ku.Seeta Mishra D/o Rajendra Prasad Mishra, aged about 20 years.
- All are R/o village Paladikala, P.S.Baradwar, Tahsil Shakti, District Janjgir-Champa (C.G.).

---Appellants

Versus

1. Parvej Akhtar S/o A.K.Khan, R/o village Baraud P.S.Gharghoda, District Raigarh (C.G.) (Owner).
2. Anil Singh S/o Bishanbhar Singh, R/o Santoshi Maa Gali, Dimarapur Chowk, Raigarh, Tahsil & District Raigarh (C.G.) (Driver).
3. Bazaz Allianz Company Private Limited, Shivmohan Bhavan, Vidhansabha Road, Padari, Raipur, Tahsil & District Raipur (C.G.).

---Respondents

Shri Parag Kotecha and Shri Dashrath Gupta, Amicus curiae appointed by the Court.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/01/2018

1. The present matter was taken up for hearing yesterday, however, since there was no representation on behalf of either side, this Court had ordered for taking up the matter today. Today also, on repeated call being made, there is no representation on behalf of either side. Therefore, this Court considering the fact that the appeal is of the year 2011 thought it fit for hearing the appeal by taking assistance of Shri Parag Kotecha and Shri Dashrath Gupta, Advocates present in the Court. They were granted time to

go through the record for assisting the Court and the matter was taken up for hearing after a while.

2. The facts of the case in brief is that, on the night of 14/02/2009, the deceased-Raju Mishra was travelling on a Motorcycle bearing registration No. CG-11-B-3194, belonging to the brother in law of the deceased. It is said that the deceased later went and dashed against a stationery Truck parked on the middle of the road without any sufficient indication or parking lights, as a result of which the deceased received grievous injuries, he was immediately admitted to the hospital and after about 3 months time, he had expired. The legal representatives of the deceased filed a claim application under Section 166 of the Motor Vehicles Act and vide the impugned award, the Tribunal has awarded a compensation of Rs.29,249/- with interest @ 6% per annum from the date of application.

3. While passing the said impugned award, the Tribunal had also assessed contributory negligence on part of the deceased to the extent of 50%. The Truck bearing registration No. CG-04-G-4291, owned by the respondent No.1, driven by the respondent No.2 and insured by the respondent No.3 was fastened with the liability of payment of 50% of the awarded compensation.

4. The counsel for the parties referred the medical condition of the deceased wherein the case of the claimants was that the deceased had received grievous injuries on his head and neck, in as much as apart from the head injury, there was a fracture on the neck bone of the deceased so

also there was a fracture on the C-2 to C-6 Vertebra and Tissues. Likewise there was also Oedema found at the injury place. Further from the evidence it also reflects that, the deceased was thereafter transferred from Janjgir-Champa to Vimla Devi Memorial and Research Centre, Bilaspur.

5. Both the counsels had jointly made a statement that, it is a fit case for remand as from the record it reflects that, the claimants had not been able to produce the medical evidence or for that matter, any evidence of the doctor with which it could be established that the death of the deceased occurred on account of the accidental injuries which he had suffered from the accident that took place on 14/02/2009.

6. Both the counsels referred to 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 have held that, the Tribunal should not be mere spectators, but should also be involved in the effective disposal of the claim case. For ready reference, paragraph 22 and 23 are reproduced herein 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.”

7. From perusal of the record it appears that the claimants have not been either sufficiently advised that they could have got the doctor examined on commission or they were ignorant of such procedure which could have been adopted. It was also the responsibility of the Tribunal to have assisted the claimants in this regard so as to do substantial justice.

8. Given the aforesaid facts and circumstances of the case this Court is of the opinion that, it could be fair and reasonable if, the matter could be remanded back so that the claimants if they are able to get the doctor examined then perhaps they would be entitled for something more than what has been awarded by the Tribunal.

9. Accordingly, the impugned award dated 26/08/2011 passed by the learned Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-

Champa in Motor Accident Claim Case No. 37/2009 stands set aside and the matter is remitted back to the Tribunal.

10. It is directed that, the Tribunal shall send fresh notice to the parties as there was no proper representation on their behalf before this Court while disposal of the appeal and after due service of the notice, the Tribunal may proceed to decide the matter afresh.

11. This Court will like to render a word of appreciation to Shri Dashrath Gupta and Shri Parag Kotecha, Advocates for providing legal assistance in the disposal of the appeal.

12. The appeal stands allowed in part and disposed off.

13. The registry is directed to send a copy of the order of this Court to the Secretary, District Legal Services Authority, Janjgir Champa who in turn should ensure the delivery of this order to the claimants at the address shown in the cause title.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE