

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 83 of 2018**

Minor Govind Nishad S/o Mahesh Kumar Nishad Aged About 6 Years Through Natural Guardian Father Mahesh Kumar Nishad, S/o Chamaru Nishad, Age 26 Years, R/o Village Amoda, Tah. Baramkela, Distt. Raigarh, Chhattisgarh (Claimant)

----Appellant**Versus**

1. Suresh Kumar Patel S/o Motiram Patel Aged About 39 Years R/o Village Saripali, Tah. Pandari, Raipur Chhattisgarh At Present Near High School Basna, Distt. Mahasamund Chhattisgarh (Driver)
2. Sunil Kumar Agrawal S/o Laxminarayan Agrawal Aged About 36 Years R/o Behind Eidgah Charch Para Basna, Distt. Mahasamund Chhattisgarh (Owner)
3. The New India Insurance Company Limited, Zonal Office - II, Jeevan Beema Marg, Vyvsayik Parisar Raipur, Tah. And Distt. Raipur Chhattisgarh

----Respondents

For Appellant : Ms. Sharmila Singhai, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

16/01/2018

1. Present is an appeal by the Claimant under Section 173 of the Motor Vehicles Act. The present appeal has been filed on behalf of a minor, who sustained motor accident injury on 16.09.2015, when he was traveling with his father on a motorcycle was hit by a Truck bearing registration No. CG/04/JC/7765 owned by the respondent No.2 and driven by the respondent No.1.
2. Counsel for the appellant at the outset submits that it is a case where as a result of the accident, the minor-Claimant is said to have sustained injury, which has resulted in his mild mental retardation. She has further submitted that she could only obtain a medical certificate from the competent medical board on 25.07.2017 i.e. just a few days before the impugned award was passed. She further

submits that as the certificate itself was obtained late, she could not produce the Doctor before the Tribunal nor could the medical evidence be brought on record to establish the nature of injuries caused.

3. Considering the judgment of the Hon'ble Supreme Court in the case of ***“Rajkumar vs. Ajay Kumar and Another”*** reported in (2011) 1 SCC 343, wherein it has been observed in para Nos. 22 & 23 that :

“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.”

4. In view of the aforesaid decision, this Court is of the opinion that if the contention of the counsel for the appellant is to be believed, the nature of injury sustained by the Claimant, the minor boy aged around 6 years, is too serious an injury and in the event if the Claimant is not sufficiently compensated for the said injury, it would be substantial injustice caused to the Claimant.
5. In the overall facts and circumstances of the case, this Court is of the opinion that ends of justice would meet if the impugned award is set-aside and the matter is remitted back to the Tribunal granting another opportunity to the appellant to produce sufficient evidence before the Tribunal to prove the injury and the disability caused from the accident by the minor.
6. The appeal thus is allowed and the matter stands remanded.

Sd/-
(P. Sam Koshy)
Judge