

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1738 of 2017

1. Dhaniram Sahu S/o Jawaharlal Sahu, Aged About 26 Years R/o Sipaahi, Police Chowki Fasterpur, District Mungeli, Chhattisgarh
2. Next Friend Smt. Mongra W/o Dhaniram Sahu, Aged About 24 Years R/o Sipaahi, Tahsil & District Mungeli, Chhattisgarh.....(Claimants)

---- Appellants

Versus

1. Raju Singh Mandavi S/o Bihaar Singh Mandavi, Aged About 36 Years R/o Birgaon, Police Station Jarhagaon, District Mungeli, Chhattisgarh(Driver)
2. Ashok Agrawal S/o Omprakash Agrawal, Aged About 37 Years Occupation Business, R/o Nagar Panchayat Lakhanpur, Ward No.8, Police Station, Tahsil Lakhanpur, District Sarguja, Chhattisgarh(Ex-Vehicle Owner)
3. Sunil Agrawal S/o Shyamlal Agrawal, Aged About 37 Years Occupation Business, R/o Village Takhatpur, Police Station, Tahsil Takhatpur, District Mungeli, Chhattisgarh
4. Branch Manager, The Oriental Insurance Company Limited, B-22, Indira Bihar Seepat Road Bilaspur, Chhattisgarh

---Respondents

For Appellants	:	Mr. Rajkumar Pali, Advocate
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/01/2018

1. Heard on I.A. No.1, which is an application for condonation of delay.

Considering the medical condition of the Claimant the reasons assigned in the application for condonation of delay is found to be satisfactory, I.A. No.1 is allowed and delay of 180 days in filing the appeal stands condoned.
2. Present is an appeal under Section 173 of the Motor Vehicles Act assailing the award dated 08.03.2017, passed in Motor Accident Claim Case No. 13/2014, decided by the Additional Motor Accident Claims Tribunal, Mungeli, Chhattisgarh. Vide the impugned award

the Tribunal in an injury case has awarded a compensation of Rs.2,59,800/- with interest @ 6% per annum. Of the said amount, Rs.2,31,800/- is towards the medical expenses incurred by the Claimants.

3. The counsel for the appellants fairly submits that it is a case where the Claimant in the instant has received grievous injuries and was also in coma stage for a considerable period of time and had to be hospitalized for a pretty long time and during all this period he had incurred huge medical expenses, which the Tribunal has not properly appreciated while awarding the compensation.
4. It was also contended by the counsel for the appellant that inspite of best efforts, he could not get the Doctor examined before the Tribunal and that was a reason, why the Tribunal has not awarded compensation for the disability part.
5. Counsel for the appellants prays that matter be remanded to the trial Court with a liberty to the Claimants to get the Doctor examined on commission basis or at least one more effort be made for calling the Doctor before the Tribunal, so that the Claimants can substantiate their claim more effectively.
6. Given the total facts and circumstances of the case, particularly considering the nature of injuries as has been discussed by the Tribunal itself, this Court is of the opinion that the fact that the provision for grant of claim is a liberal piece of legislation, the claim of the Claimants should be considered in a more pragmatic, sympathetic and liberalmanner.

7. Considering the entire factual matrix of the case, this Court is of the opinion that ends of justice would meet if the matter is remitted back to the Tribunal for the Tribunal to permit the Claimants to get the Doctor examined either calling upon the Doctor before the Tribunal or getting the Doctor examined on commission. The expenses of which shall be borne by the Claimant. The Tribunal may pass a fresh award considering the fresh evidence, which may come on record.
8. The view of this Court stands fortified from the decision of the Hon'ble Supreme Court in the case of ***“Raj Kumar vs. Ajay Kumar and Another”***, reported in ***(2011) 1 SCC 343***, where in paragraphs No. 22 and 23, the Hon'ble Supreme Court 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. 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.”

9. Let the appellants, who are present before the Court, now appear before the Tribunal on 12th of February, 2018 and on which date, if possible, he should keep his witness present or at least on the next date to be given by the Tribunal. If he so feels, he may also move an appropriate application for getting the Doctor examined on commission.
10. As a consequence, the impugned award is set-aside and the matter is remanded back for a fresh award to be passed by the Tribunal at the earliest.

Sd/-
(P. Sam Koshy)
Judge

Ved