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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.R.P. 56/2018

SANJANA

..... Petitioner

Through: Md. Usman Siddiqui, Adv

versus

KHUSHBU BHATIA & ANR

..... Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **31.07.2018**

CM No. 11619/2018 (Exemption)

This is an application filed on behalf of the petitioner for exemption from filing certified copies of the Trial Court record and other documents.

Exemption allowed, subject to just exceptions.

C.R.P. 56/2018 and CM No.11618/2018

Initial submissions have been made on behalf of the petitioner.

Vide the present petition, the petitioners seek the setting aside of the impugned order dated 24.1.2018 in MACT No.77152/16 of the Judge, MACT-01 (West), vide which the matter is indicated to be fixed for final arguments and for examination of the petitioners in accordance with the MCTAP.

Vide the impugned order dated 24.1.2018, an application filed by the learned counsel for the petitioners under Section 151 CPC, seeking that the matter be referred to the expert Medical opinion of the Medical Board of the AIIMS or the Safdarjung

Hospital, was declined for seeking the opinion of expert doctors qua the injuries sustained by the victim.

The impugned order itself observes to the effect that it had been submitted on behalf of the petitioner that though the doctor concerned had been examined in the case but his testimony was not reliable and trust worthy and the doctor who had been examined neither gave the treatment nor had he prepared the MLC and other medical documents. It is indicated, as per the record, that the deceased Vijay Kumar suffered an accident on 6.2.2015 and was taken to the DDU Hospital after the accident in question and was examined by Dr.Saurabh Jain at the DDU Hospital who has been examined as PW-4 and that the said Dr.Saurabh Jain was examined on 2.8.2017 and cross-examined on 23.8.2017. It has been submitted on behalf of the petitioner that the testimony of PW-4 which is to the effect:

“2.8.2017

PW-4: Statement of Dr. Sourabh Jain, presently posted as CMO in Deen Dayal Upadhyay Hospital, New Delhi. On S.A.

I was the CMO on duty on 06.02.2015 when the patient namely Vijay Kumar s/o Sh. Ram Kumar, aged about 32 years made vide MLC No. 980 was brought to casualty with alleged history of road traffic accident as told by patient and accompanying person namely Mrs. Sanjana, wife of deceased. The MLC was prepared under my supervision. The injuries at the time of examination were as follows:

- 1. Contused lacerated Wound for about 4X1 cm over right eye brow***
- 2. Graze Abraze with skin loss below right eye approximately 7X2 cm.***

3. Tenderness over right lower chest;

The patient was referred to the Department of Ophthalmology Plastic Surgery and General Surgery. The MLC was prepared by Dr. Khushwant Singh, Senior Resident Casualty and I identified the signature of Dr. Khushwant Singh. As per the MLC, the injuries suffered by the patient were simple. The patient was examined by Doctor on duty of Ophthalmology Department. As per the treatment given by ophthalmologist, the nature of injury was simple. The same was the opinion given by General Surgery Doctors.

Without seeing the record, I cannot say as to who were the specialist doctors who treated the patient. I also cannot tell the duration of the treatment of the patient without seeing the record.

Further examination-in-chief is deferred as the witness has not brought the complete record of the treatment of the patient namely Sh. Vijay Kumar.

RO & AC

(Raj Kumar)

Judge: MACT-01(West)

Delhi/02.08.2017

23.08.2017

PW-4 Statement of Dr. Sourabh Jain (recalled for further examination-in-chief after 2.8.2017)

As per the record, the patient Vijay Kumar was not admitted in Deen Dayal Upadhyay hospital. The patient Vijay Kumar came in the casualty of the said hospital on 06.02.2015. He was examined by Dr. Khushant Singh, SR (Casualty) and Dr. Meenakshi, DNB Resident Ophthalmology, Dr. Gaurav and Dr. Raj Shekhar, Sr. Residents (General Surgery). There are no record of patient Vijay Kumar being admitted in the said hospital on the above date. As per record brought by me today in the Court, the patient was remained in the hospital for 3-4 hours on 06.02.2015 itself. The photocopies of the treatment record of the patient Vijay Kumar brought by me today in the Court running into 15 pages are collectively

exhibited as EX.PW-4/1. According to me, the patient Vijay Kumar could have recovered from the injuries mentioned in the MLC within a period of 1-2 weeks. Except the signatures of Dr. Khushwant Singh, SR (Casualty, I cannot identify the signature of any other doctor named by me herein above.

XXX by Sh. Nar Singh, Id. Proxy counsel for the Insurance Company.

As per MLC, the case of Mr.Vijay was a simple injury case.

RO & AC

(Raj Kumar)

Judge: MACT-01(West)

Delhi/02.08.2017”

The examination led on 2.8.2017 and the cross-examination dated 23.8.2017 indicate that the patient *per se* had not been examined by Dr. Sourabh Jain. On a perusal of the same without any observation on the merit or demerits of the adjudication to take place in MACT No.477152/16 it is essential to observe that Dr.Sourabh Jain examined as PW-4 has categorically testified to the effect that he was the CMO on the date 6.2.2015 when the patient, namely Vijay Kumar s/O Ram Kumar aged about 32 years made vide MLC No.980 was brought to the casualty with alleged history of road traffic accident as told by the patient and the accompanying person, *namely*, Mrs. Sanjana, W/o the deceased and he had further stated that the MLC was prepared under his supervision. The statement of Dr. Sourabh Jain, further described the injuries at the time of examination at serial No.1 to 3 as:

- 1. Contused lacerated Wound for about 4X1 cm over right eye brow*
- 2. Graze Abraze with skin loss below right*

eye approximately 7X2 cm.

3. Tenderness over right lower chest;

and has also testified to the effect that the patient had been referred to the Department of Ophthalmology, Plastic Surgery and General Surgery. The MLC was prepared by Dr. Khushwant Singh, Senior Resident Casualty and he identified the signatures of Dr. Khushwant Singh. As per the MLC injuries suffered by the patient were simple. The patient was examined by the Doctor on duty of the Ophthalmology Department. He further testified that as per the treatment given by the Ophthalmologist, the nature of injury was simple and the same was the opinion given by the General Surgery Doctors. It is further indicated that the patient remained in the hospital for 3-4 hours on 6.2.2015. The witness identified the signatures of Dr. Khushwant Singh, SR (Casualty). On being cross-examined on behalf of the Insurance Company, this witness had submitted that as per the MLC the case of the patient was a simple injury case and that apart from the signatures of Dr. Khushwant Singh, he could not identify the signatures of any other doctor name by him i.e. Dr. Meenakshi, DNB Resident Ophthalmology, Dr. Gaurav and Dr. Raj Shekhar, Sr. Residents (General Surgery) and all the said doctors are stated to be not available now.

On behalf of the petitioner it is submitted by the learned counsel for the petitioner, to the effect that the said documents be sent to the Medical Board of the AIIMS or Safdarjung Hospital to assist the petitioner to seek adequate compensation in relation to

the injuries sustained by the injured (since deceased) who had expired pursuant to a suicide submitting to the effect that the suicide of the deceased was pursuant to the trauma caused to him by the injuries on his face submitting *inter alia* to the effect that there was a loss of skin also on the face of the injured (since deceased).

Vide the impugned order, the prayer made by the petitioner seeking referring of the documents for the expert Medical opinion of the AIIMS or of the Safdarjung Hospital has been declined. It has also been observed to the effect *inter alia* to the effect that the documents that have been prepared were in relation to the examination of the injured (since deceased) on the date 6.2.2015 at DDU Hospital and the opinion on the documents had been prepared by the doctors of DDU Hospital and not by the doctors of Safdarjung hospital nor of the AIIMS and the deceased is no more there in the world. The cause of the death in the instant case as per the post mortem report was asphyxia caused by ante mortem ligature hanging in as much as the manner of death was suicide.

The witness CMO from the DDU hospital has already been examined, the medical documents i.e., the MLC, and all other documents in relation to the matter referred to the Ophthalmology department are on the record and the opinion of the doctors are on the record.

In the circumstances, it is not considered appropriate to refer the matter to any further Board of AIIMS or of the

Safdarjung Hospital. The adjudication in relation to the extent of compensation, i.e., to be awarded, is apparently, already subjudice in MACT No.77152/2016, and it is not considered appropriate to add any extraneous evidence now on the record. The petition and the accompanying applications are declined.

A copy of the order be sent to the learned Trial Court.

ANU MALHOTRA, J

JULY 31, 2018/SV