

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14082 OF 2019

Kavita w/o Dilip Nalwad
& another

Petitioners

Versus

Ashok S/o Sugriv Awale
& others

Respondents

Mr. P.D. Jarare, Advocate for the petitioners.

Mr.S.G. Chapalgaonkar, Advocate for Respondent No. 3.

CORAM : Ravindra V.Ghuge, J.

DATE : 21st November, 2019.

PER COURT :

1. The petitioners are the original claimants in Motor Accident Claim Petition No. 203/2014. They are aggrieved by a single sentence order passed by the trial Court while rejecting the application Exhibit 70 seeking appointment of a Court Commission.

2. The contesting respondent in this matter is Respondent no. 3 – Insurance Company. Respondents No. 1 and 2, as per the submissions of petitioners, are not concerned with the present cause of action and hence, leave to delete is granted.

3. I have considered the submissions of the learned Advocates. There is no dispute that Dr. Darpan Thakare, who is said to be a super speciality Neurologist practising in Mumbai and attached to various hospitals as faculty, is permitted to be examined as a witness since the claimant-victim of the accident, is said to have taken further treatment under his guidance at Mumbai.

4. The difficulty that has arisen is that Dr. Thakare is said to be extremely busy and he would not find time to travel from Mumbai to Latur for his examination/deposition. Summons were served on him and he could not make it to the Court for such examination. In this backdrop, application Exhibit 70 was filed by the claimants praying for appointing a Court Commission to record the examination and cross-examination of Dr. Thakare.

5. The learned Advocate for the petitioners has relied upon paragraph No. 16 of the judgment delivered by the Honourable Apex Court in the matter of Raj Kumar Vs. Ajay Kumar & another [2011(1)SCC 343] which reads as under :-

16. 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 the Tribunal 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 favourable. This forces the injured claimants to approach professional certificate givers whose evidence most of the time is found to be not satisfactory. 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.

6. The learned Advocate for the Insurance Company submits that it would be extremely cumbersome for all the parties and their advocates to travel to Mumbai for the recording of evidence of Dr. Thakare. He suggests that such recording can be done through Video Conferencing facility as per the procedure as is permissible under the rules. The learned Advocate for the petitioners is agreeable.

7. In view of the above, this petition is partly allowed. The impugned single sentence order dated 06.11.2019 is quashed and set aside.

8. The learned Judge - Dr. Gauri Kawkdikar who has passed the said order is advised to refrain from passing single sentence orders and should consider the entire submissions of the learned advocates before passing an order on any application. The learned Registrar (Judicial) of this Court shall place the copy of this order

before the learned Principal District Judge, Latur, so as to advise the learned Judge.

9. The learned Tribunal shall pass an appropriate order in accordance with the permissible procedure for arranging the recording of evidence of Dr. Darpan Thakare through Video Conferencing. In the event this is not possible, the parties may request the Tribunal to pass a further order for appointing a Commission for the recording of oral evidence of Dr. Thakare. The claimants agree to bear such expenses, if the occasion arises.

(Ravindra V.Ghuge, J.)

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