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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8937 OF 2018

Vijay Uttam Chavan

PETITIONER

VERSUS

Sanjay Vinayak Suryawanshi and Others

RESPONDENTS

Mr. K. F. Shingare, Advocate for the petitioner

Mr. Mahesh B. Kanade, Advocate for respondent No.1

Mr. A. S. Usmanpurkar, Advocate for respondents No.2

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th APRIL, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the Motor Accident Claims Tribunal, Aurangabad below Exhibit-50 in MACP No. 283 of 2015 thereby rejecting the application filed by the petitioner / claimant seeking permission to lead secondary evidence in respect of the medical documents.

2. The claim is filed by the petitioner, as he allegedly suffered serious injuries and was unconscious for about 17 days. The accident took place in the year 2005 and the claim is filed in the year 2015. The petitioner, thereafter on 17th February, 2018, submitted list of documents thereby producing photo copies of discharge card, medical bills, various receipts etc. and filed application claiming that though the documents were collected and photo copies of the same were handed over to the advocate

of the claimant, originals of the same are misplaced and they are not traceable. Photo copies of the said documents are already placed on record, therefore, the petitioner sought permission to lead secondary evidence in respect of the said medical documents. The Tribunal rejected the application mainly on the ground that when photocopies of said medical documents are available, then the original has to be there with the petitioner / claimant. The petitioner has not filed affidavit in support of the said application and the application is filed by the petitioner without taking efforts to find the original documents. The petitioner has to prove his claim by leading primary evidence.

3. I have heard learned advocate for the petitioner and the learned advocates for the respondents.

4. Learned advocates for the respondents strenuously opposed the petition contending that the petitioner has already approached belatedly to the Tribunal, as the accident has taken place in the year 2005 and he has approached the Tribunal in the year 2015 and the present application is also filed belatedly by the petitioner after three years of filing of the claim petition.

5. True it is that the petitioner has belatedly filed the application seeking permission to lead secondary evidence. But,

the petitioner has nothing to gain by belatedly filing the said application. The delay caused by the petitioner may be taken into consideration in case the Tribunal allows the claim petition and awards compensation and grants interest on the compensation amount.

6. The Tribunal ought to have allowed the application filed by the petitioner so as to give fair opportunity to the petitioner to lead secondary evidence in support of his claim. Admissibility and proof of the said evidence can be considered on merits by the Tribunal at the time of final decision of the claim.

7. In the peculiar facts of the present case, the petition deserves to be allowed by setting aside the impugned order. Accordingly, the writ petition is allowed and the impugned order is set aside. Application Exhibit-50 is allowed. All the objections of the respondents as to the secondary evidence to be lead by the petitioner are kept open. Taking into consideration the fact that the claim petition is of the year 2015, the Tribunal shall expedite the hearing and decide the same as expeditiously as possible and in any case within a period of six months from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE