

(2002) 11 JH CK 0055
In the Jharkhand High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

K. Kanagasabapathy and Others

RESPONDENT

Date of Decision : 29-11-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 144, 166, 66

Citation : (2003) 3 ACC 211

Hon'ble Judges : Vinod Kumar Gupta, C.J; Amareshwar Sahay, J

Bench : Division Bench

Judgement

1. The entire thrust of the claimant's claim before the Tribunal was based - upon and linked with the injuries sustained by him because of the accident and correspondingly also the extent of permanent disablement (68%) caused to him by these injuries. Ext. 4 series documents and Ext. 8 document appear to be such documents which the claimant produced before the Tribunal during the course of recording of his own statement as his own witness. Relying upon these exhibits the Tribunal awarded a sum of Rs. 4,86,000/- as the compensation in favour of the claimant.

2. Undoubtedly, the course of action adopted by the claimant was not legally correct inasmuch as the Tribunal should not have exhibited the aforesaid documents because these documents were not properly proved by the claimant. The only way by which these documents could have been proved and hence admitted into evidence was by producing the author of the documents who could prove the contents of the documents, identified his signature and so on and so forth. If a claimant during the course of his evidence, appearing as his own witness is allowed to produce any number of documents and also get them exhibited without the authors of the documents coming forth as a witness, proving their contents and the signature therein, such a cause of action shall be against law. Even though claim petitions filed u/s 166 of the M.V. Act are required to be disposed of expeditiously, without insisting upon the compliance with the technicalities of law, yet established and binding principles of Evidence

Law cannot be given a go-bye, by exhibiting documents which have not been proved at all in accordance with the provisions of Evidence Law, except of course such documents which are "public documents" and which may not require their formal proof. This is one aspect of the matter.

3. The other aspect is with respect to the alleged injuries and the factum of permanent disablement and the extent of any such permanent disablement. There are judgments galore on this subject, including the judgments given by this Court that in all injury cases unless a medical expert comes and testifies with respect to the factum of injuries, the nature and extent of the injuries and also the nature and extent of disablement, permanent and temporary, the Tribunal should not act on the basis of ipse dixit of the claimants. If the claimants do not adduce medical evidence, the claim with respect to the injuries should not be allowed. Reference accordingly is drawn to the Division Bench judgment of this Court in the case of Oriental Insurance Co. Ltd. v. Johan Shah reported in I(2001) ACC 12 : 2001 (2) JLJR 163 wherein the following observations were made with respect to the aforesaid binding principles of law, both touching upon the legal requirement of getting the documents fully proved (in accordance with the principles of Evidence Law) and the examination of Medical Experts as witnesses in support of the factum of the injury and the nature and extent thereof. We quote:

The limited issue raised for our adjudication by the appellant-Insurer is with respect to the determination of the quantum of compensation based on the assessment as per the learned Tribunal with regard to the alleged injury allegedly sustained by the respondent No. 1 and the alleged disablement suffered by him on account of and as a result of the accident in question. What do we find from perusal of the judgment under appeal is that the claimant, apart from his own testimony, did not produce any evidence whatsoever to prove any fact either about any injury being suffered by him, or any disablement having been caused to him or any expenses , incurred by him for the alleged treatment or for any injury. Admittedly, no doctor was produced. No other evidence, medical or otherwise, was adduced by the claimant in the Tribunal in support of his claim for compensation. It is an established principle of law that if a claimant claims compensation for a wrong committed to him by a wrong doer, he has to establish his claim with regard to such facts and figures which justify the determination of the compensation amount on the basis of the evidence adduced by the claimant in the Court, specially so, in a claim petition filed under Sections 144 and 66 of the Motor Vehicles Act with regard to an alleged injury received by the claimant and the alleged disablement, partial or complete, suffered by him. He is under an obligation to prove the same by production of cogent evidence.

The Bench went on to further observe as under:

In a case relating to the claim on account of an alleged injury allegedly sustained by a claimant, best evidence is of the medical witness. The doctor who attended upon the claimant, treated him and prescribed medicines etc. for him, is the best

person. He is the person who is in a position to testify as to whether the claimant received any injury. If so, its extent, and as to whether any disablement, permanent or temporary or partial, was suffered by the claimant. Coupled with this would be the evidence required to prove the expenditure which the claimant had to incur for treatment of the injury and for the sufferings etc. undergone by him. Such evidence can be in the form of witnesses who would come and testify about the expenses incurred by the claimant. These witnesses, medical as well as other witnesses, would always be subject to cross-examination by the opposite party.

4. In conclusion, referring to the value of the bald statement of the claimant himself as his own witness, the Bench observed thus:

What we see in the case before us, however, is that the claimant-respondent No. 1 chose not to produce any evidence, much less any medical witness, in support of his contention that he had suffered injury, disablement and had incurred expenditure in treating himself. His bare and bald testimony cannot be a substitute for the evidence. If he thought that by his own statement, appearing as his own witness, he could comply with the requirements of proving the facts, he was mistaken.

The Accident Claims Tribunal, therefore, was totally wrong and misdirected itself in allowing the claim of respondent No. 1 and passing an award for as high an amount as Rs. 2 lakhs without there being an iota of evidence with respect to the injuries, the disablement or expenses incurred by the claimant.

5. Despite the aforesaid pronouncements by this Court and other High Courts, the Tribunal in the present case went on to award the compensation, and of a heavy amount, without there being an iota of medical evidence. Admittedly, no doctor was produced in this case to testify on behalf of the claimant.

6. We once again wish to lay down, with greater stress and higher emphasis that the aforesaid requirements are not empty legal formalities and these are not by way of any ritualistic observations. These legal requirements touching upon the very veracity of the truthfulness of a claimant's claim, the facts associated with the claim are undoubtedly the requirements to be proved and established and also the facts which would go to determine the amount that the Court/Tribunal may award as compensation. If we view the said principles of law in the context of a fact-situation where a claimant pleads that he has received injuries and has spent considerable amount in his treatment etc., the minimum that is required is to produce documentary evidence with respect to the injuries sustained, the treatment taken and the expenses incurred in such treatment. The documents in so far as the injury sustained and the treatment taken comprise of medical prescriptions, the written advises by the doctors, the record of the hospitals etc. etc. and similarly the documents with respect to the expenses incurred have to be in the form of vouchers, bills and such other related documents issued by the Institutions/Agencies through which the expenditure was incurred, say Chemists,

Hospitals, Doctors etc. In ordinary course, the vouchers etc. from Chemists and Hospitals may not require strict formal proof if these are corroborated by the medical prescriptions even though their formal proof would go a long way in establishing conclusively the fact of claimant having incurred these expenses. The more important aspect, however, is that the doctor treating the claimant and who had diagnosed and detected the injuries and who had come to the conclusion that the claimant had suffered or is continuously suffering or is likely to suffer for the rest of his life disablement of any nature and of any extent, it is imperative that such a medical practitioner is produced in the Court, so that the contesting respondent has an opportunity of cross-examining him to elicit the whole truth so as to raise defences by way of properly contesting the claim of the claimant. By this process, even the Court will be in an advantageous position to know for, itself as to how much compensation if at all should be awarded because a medical expert is the best witness with respect to the factum of injury, its nature and the extent thereof.

7. Undoubtedly, in this case the claimant, as noticed at the outset, had not adopted the aforesaid course of action.

8. Unfortunately, however, the problem in this case with the appellant is that neither before the Tribunal nor in this Court the appellant raised its little finger either with respect to the admissibility of the aforesaid documents or the non-tenability of the claim on account of the fact that the doctor was not produced. Even in the memo of appeal the appellant has not raised as a ground of appeal, any of the aforesaid contentions. Despite our reiteration of the proposition of law as mentioned in the foregoing paragraphs of this judgment, we have no hesitation in dismissing this appeal because we find that a contesting respondent who did not raise the aforesaid defences in the Tribunal can be said to have acquiesced with the contentions raised by the claimant, because despite opportunities available it did not raise any objections to the untenability of the claim or the inadmissibility of the documents being exhibited in the manner it was done. Acquiescence is, much more writ large because in the memorandum of appeal filed in this Court, no ground whatsoever, not even by way of a murmur or whisper, has been taken by the appellant as a ground of challenge while assailing the judgment of the Tribunal. We must also say for the sake of record that even during the course of arguments, learned Counsel appearing for the appellant did not urge or raise any of these grounds while challenging the award in this appeal. We cannot, therefore, help such an appellant who did not raise or urge these grounds of defence either during the trial before the Tribunal or while assailing the judgment in this appeal.

9. In the absence of any of the aforesaid contentions being raised by the appellant, this appeal must fail. The appeal is accordingly dismissed.

10. The statutory amount deposited by the appellant shall be transmitted to the Tribunal for disbursement to the claimant.

11. Because of the aforesaid observations made, we direct the Registrar General of this Court to circulate the copies of this judgment for the information of all concerned.