
(2013) 01 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 5084 of 2009-I

New India Assurance Company Ltd.

APPELLANT

Vs

Shri Raj Kumar and Others

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Citation : (2013) 2 ShimLC 723

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : B.M. Chauhan, for the Appellant; Ravinder Thakur, Advocate for the Respondent No. 1 and Mr. Vishal Panwar, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Disposed Off

Judgement

Dharam Chand Chaudhary, J.—In the present writ petition, the award dated 30.6.2009, passed by learned Motor Accident Claims Tribunal-II, Solan, in claim petition No. 14-S/2 of 2005 is under challenge on the sole ground of being perverse. The petitioner admittedly insurer of the offending vehicle bearing registration No. HP-64-0400 seems to be aggrieved by the assessment of the compensation awarded by learned Motor Accident Claims Tribunal below with the help of disability certificate Ex. PW-3/A issued by Dr. Dwarka Prasad, Psychologist Kothi No. 149, Sector 48-C, Chandigarh, a private practitioner, with whom the petitioner never remained under treatment and rather as per his own case after the accident, firstly he remained under treatment in Zonal Hospital, Solan and thereafter at PGI, Chandigarh.

2. Having gone through the record and submissions made on both sides, there is no dispute so as to the accident of the vehicle i.e. Truck bearing registration No. HP-64-0400 occurred on 23rd September, 2005, near Village Dhalli, Tehsil Rajgarh, District Sirmaur. There is again no controversy so as to the fact that the claimant-1st respondent was working as cleaner with the offending vehicle/truck and paid wages at the rate of Rs. 1800/-. He received injuries including head

injury in the accident and was brought to Zonal Hospital for treatment. The OPD Slip is Ex. PW-1/A. He was referred to PGI Chandigarh on 24.9.2005. The OPD Tickets Ex. PW-5/A to Ex. PW-5/H is the record pertaining to the treatment given to the claimant-1st respondent in PGI Chandigarh. He was discharged on 30.9.2005. The disability certificate from PGI Chandigarh or Zonal Hospital, Solan has not been produced in evidence for the reasons best known to the Claimant-1st respondent. However, the disability certificate Ex. PW-3/A issued by PW-3, Dr. Dwarka Prasad, a private practitioner, has been produced in evidence.

3. Learned Counsel representing the petitioner has forcefully contended that in view of the claimant-1st respondent having remained under treatment in Zonal Hospital, Solan and PGI Chandigarh, the disability certificate issued by these hospitals alone could have been admissible in evidence and not the certificate Ex. PW-3/A, issued by a private practitioner, who never examined the claimant-1st respondent nor remained under his treatment.

4. On the other hand, it is argued on behalf of the claimant-1st respondent that in view of there being no cross examination qua authenticity and genuineness of disability certificate Ex. PW-3/A conducted on behalf of insurer-petitioner, learned Motor Accident Claims Tribunal below has rightly appreciated the same while assessing the compensation awarded to the petitioner. The question as to whether the disability certificate in the nature of Ex. PW-3/A is admissible in evidence or not has been set at rest by the Apex Court in *Raj Kumar Vs. Ajay Kumar and Another*, relevant portion of which reads as under:--

18. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give "ready to use" disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily give liberal disability certificate to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or discharge certificate will not be proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of the claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local hospitals/medical colleges) and refer the claimant to such Medical Board for assessment of the disability.

5. The apex Court has arrived at such conclusion, after taking into consideration all pros and cons of assessment of future allowance of earning on the basis of permanent disability certificate in para 8 to 17 of the judgment. Thus the law laid down by the apex Court is that a disability certificate issued either by a doctor

under whom the injured/claimants remained under treatment or by a duly constituted Medical Board from a panel maintained in consultation with reputed local hospital/medical colleges alone is admissible in evidence that too if the doctor concerned, who has issued the certificate is examined to prove that certificate. It has further been held in this judgment that if, the Court is not satisfied with the authenticity and genuineness of the disability certificate, the injured claimant can be referred to a medical board to be constituted by such Court itself.

6. Learned Counsel for the petitioner has also placed reliance on the judgment of a Division Bench of Punjab and Haryana High Court in Ram Kiran Goyal Vs. Sub Divisional Engineer, Mechanical and Others, . The ratio of this judgment, which reads as follows, reveals that a disability certificate obtained from a private doctor does not inspire confidence particularly when the injured claimant had taken treatment from the Government Hospitals:--

14. So far as the above authority is concerned, learned singly Judge has already assessed compensation separately for both pecuniary and non-pecuniary damages as the compensation has been awarded under separate heads, i.e., permanent disability and pain and suffering, medicines and future loss of income and we do not find any scope for enhancement of compensation. So far as the disability certificate, Exh. P18, is concerned, it does not inspire any confidence having been obtained from a private doctor, though the other treatment is taken from the government hospital. However, the compensation which has been awarded for admitted permanent disability needs to be enhanced and for that, we are inclined to follow the decision of Division Bench of this Court referred to above where Rs. 2,000/- has been awarded for 1 per cent disability to the injured. On that count, the compensation in respect of permanent disability, which is awarded vide Exh. P31 as 55 per cent, the compensation is thus, assessed at the rate of Rs. 2,000 for every 1 per cent disability to the tune of Rs. 1,10,000/-.

7. The ratio of this judgment clinches the point in issue in the present writ petition because here also the treatment has been taken by the injured-claimant from Zonal Hospital, Solan and PGI Chandigarh, the Government Hospitals, whereas the certificate Ex. PW-3/A as produced in evidence has been issued by a private practitioner.

8. In view of the settled legal principles discussed supra, the certificate could have not been relied upon to assess any physical or mental disability caused to claimant-respondent No. 1 on account of injuries, he sustained in the accident qua the compensation awarded to him assessed on the basis thereof. If this document is excluded from the evidence, there hardly remains any legal and acceptable evidence on record to show that the petitioner has sustained permanent disability on account of injuries, he received in the accident. The Court, however, can refer the injured-claimant to medical board. He could have been referred to such medical board by this Court itself, however, in that event,

either party may lose the chance of appeal before this Court, therefore, it is deemed proper that the award, which, as a matter of fact, is based upon disability certificate, Ex. PW-3/A should be set aside and this petition remanded to learned Motor Accidents Claims Tribunal-II, Solan for fresh disposal after holding de novo trial from the stage of referring claimant-respondent No. 1 to a medical board to get the permanent disability, if any, he sustained on account of the injuries received in the accident assessed and after affording the parties due opportunity of being heard.

9. For all the reasons hereinabove, this petition succeeds and the same is accordingly accepted. Consequently, the impugned award is quashed and set aside. The case, however, is remanded to learned Motor Accident Claims Tribunal-II, Solan for disposal in the light of the observations made hereinabove. Let the parties appear before learned Motor Accident Claims Tribunal-II, Solan on 20th February, 2013. With these observations, the writ petition stands disposed of, so also the pending application(s), if any.