

(2018) 02 CHH CK 0065

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (C) No. 211 Of 2018

Nohar Lal

APPELLANT

Vs

Oriental Insurance Company Limited And Ors

RESPONDENT

Date of Decision : 02-02-2018

Acts Referred:

Citation : (2018) 02 CHH CK 0065

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Pramod Shrivastava

Final Decision : Disposed Of

Judgement

P. Sam Koshy, J

1. The present is an appeal by the claimant seeking enhancement of compensation. The challenge is to the award dated 22.09.2017 passed by the Additional Motor Accident Claims Tribunal, Surajpur (CG) in Claim Case No.92/2016. Vide the impugned award the Tribunal in an injury case has awarded a total compensation of Rs.60,195/- along with interest @ 6 percent per annum from the date of application.

2. The contention of the appellant is that the amount of compensation awarded is too meager an amount particularly when the claimant in the instant case had received grievous injuries as both his legs had sustained fracture injuries and he had also received disability certificate from the medical board, but for want of examination of treating doctor, so also the doctor who had issued the medical certificate, the proper compensation could not be quantified. He further submits that given an opportunity by remanding the matter, the appellant shall be able to adduce the evidence of doctor and also be able to prove the disability part.

3. At this juncture, it would be relevant to refer to the judgment of Supreme Court in case of Raj Kumar Vs. Ajay Kumar & Anr. 2011 (1) SCC 343, wherein in

paragraphs 22 and 23 it has been held as under :

"22. 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 Tribunals 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 favorable. This forces the injured claimants to approach 'professional' certificate givers whose evidence most of the time is found to be not satisfactory.

23. The 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."

4. In the given facts and circumstances of the case and considering the nature of injuries as has been reflected in paragraphs 13 & 14 of the award passed by the Tribunal, this court is of the opinion that ends of justice would meet if the appellant is granted one more opportunity to prove the disability part by examining the doctor. If required, the appellant can also move an application for getting the doctor examined on commission.

5. Accordingly, the impugned award dated 22.09.2017 is set aside and the matter is remitted back to the Tribunal for a fresh adjudication of the matter after the appellant-claimant is granted one more opportunity to prove the disability as also the injuries sustained. The respondents can also adduce any evidence, if so desire.

6. Let the appellant-claimant now appear before the concerned Tribunal on 05.03.2018 and the Tribunal shall try to dispose of the matter at the earliest.