

(2023) 02 J&K CK 0071

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 461, 464, 9900002, 9900006 Of 2011, IA No. 1 Of 2016

Oriental Insurance Co. Ltd

APPELLANT

Vs

Ghulam Qadir & Anr

RESPONDENT

Date of Decision : 21-02-2023

Acts Referred:

Citation : (2023) 02 J&K CK 0071

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Vishnu Gupta, Rahil Raja

Judgement

Tashi Rabstan, J

1. Since all the four claimants had been travelling from Doda to Bhagwa by the same offending vehicle bearing No.JK02K-2427, which met with an accident on 26.02.2007, as such all the appeals were taken up together and are being decided by this common judgment.

A. MA No.464/2011

2. This appeal is directed against the judgment and award dated 31.05.2011 passed by the Motor Accidents Claims Tribunal, Doda in File No.02/claim in case, titled as, Ghulam Qadir vs Divisional Manager, Oriental Insurance Co. Ltd. & anr., whereby an amount of Rs.3,60,000/- along with interest @ 9% from the date of filing of claim petition till realization came to be awarded in favour of claimant-respondent No.1 herein, and against the Insurance Company.

B. MA No.9900002/2011 (463/2011)

3. This appeal is directed against the judgment and award dated 31.05.2011 passed by the Motor Accidents Claims Tribunal, Doda in File No.04/claim in case, titled as, Abdul Hamid vs Divisional Manager, Oriental Insurance Co. Ltd. & anr., whereby an amount of Rs.3,90,000/- along with interest @ 9% from the date of

filing of claim petition till realization came to be awarded in favour of claimant-respondent No.1 herein, and against the Insurance Company.

C. MA No.461/2011

4. This appeal is directed against the judgment and award dated 31.05.2011 passed by the Motor Accidents Claims Tribunal, Doda in File No.01/claim in case, titled as, Gulshana Begum vs Divisional Manager, Oriental Insurance Co. Ltd. & anr., whereby an amount of Rs.2,20,000/- along with interest @ 9% from the date of filing of claim petition till realization came to be awarded in favour of claimant-respondent No.1 herein, and against the Insurance Company.

D. MA No.9900006/2011 (462/2011)

5. This appeal is directed against the judgment and award dated 31.05.2011 passed by the Motor Accidents Claims Tribunal, Doda in File No.03/claim in case, titled as, Ajaz Ahmed (minor) vs Divisional Manager, Oriental Insurance Co. Ltd. & anr., whereby an amount of Rs.3,20,000/- along with interest @ 9% from the date of filing of claim petition till realization came to be awarded in favour of claimant-respondent No.1 herein, and against the Insurance Company.

6. Mr. Vishnu Gupta, learned counsel appearing for insurance company contended that the compensation awarded in all the four matters is very high inasmuch as the learned Tribunal has erred in relying upon the certificates issued by Dr. N.D. Dar who, as admitted by him, was not an Orthopedic Surgeon nor he even treated the claimants. It is pointed out and contended that the disability recorded in the certificates does not match with the injuries said to have been suffered by each of the claimants. It is pointed out that the learned Tribunal has simply accepted the medical certificates without going through its genuineness and without discussing evidence in totality in this regard.

7. I have heard learned counsel appearing for the parties, considered their rival contentions and also perused the memo of appeals as well as the record of learned Tribunal – original as well as photocopies thereof.

8. Admittedly, a perusal of the judgments/awards passed by the learned Tribunal in all the four matters reveals that the learned Tribunal while passing the awards solely relied upon the statement of Dr. N.D. Dar as well as the disability certificates issued by him in respect of all the four claimants, least bothering that said Dr. N.D. Dar while recording his statement had clearly deposed that the claimants were treated by the Orthopedic Surgeon, who can give the exact percentage of the disablement and that he issued the certificates without the opinion of Orthopedic Surgeon; meaning thereby the disability certificates were issued by such a doctor who was not at all competent to issue the same.

9. Even, this Court too, while considering these matters had transpired that in MA No.464/2011 the Causality Medical Officer, District Hospital, Doda has shown the injuries in respect of respondent Ghulam Qadir to be simple in nature, whereas as per the certificate issued by Dr. N.D. Dar, Assistant Surgeon, District

Hospital, Doda, respondent Ghulam Qadir has been shown to have become disabled due to the injuries caused to him in the accident and the percentage of disablement has been shown to be more than 70% and is permanent in nature. Interestingly, Dr. N.D. Dar while recording his statement before the Presiding Officer of learned Tribunal, has himself deposed that the injuries caused to respondent Ghulam Qadir during the accident pertained to Orthopedic Surgeon who treated him and that the Orthopedic Surgeon can give the exact percentage of disablement.

10. Similarly, in MA No.9900002/2011, the record of learned Tribunal shows that while recording his statement Dr. N.D. Dar had deposed that injured Abdul Hamid has become disabled and the percentage of disablement is 80% and is permanent in nature. However, in cross examination he deposed that said Abdul Hamid remained admitted in District Hospital, Doda only for one day and thereafter he was referred to Jammu where he got treatment. He further deposed that the doctors at Jammu can give the exact percentage of disablement. Strange enough that the patient was being treated at Jammu and the disability certificate was being issued by a doctor from Doda that too who was neither an Orthopedic Surgeon nor competent to issue such a certificate.

11. In all these four petitions it is Dr. N.D. Dar, who has issued the disability certificates and somewhat similar is the position in rest of the two matters too. Thus, there were material contradictions when one compares the opinions of Causality Medical Officer, District Hospital, Doda and Dr. N.D. Dar, Assistant Surgeon, District Hospital, Doda with respect to the injuries caused to the claimants herein.

12. It has also been noticed by this Court that not only in these petitions, but in many other claim petitions too that very doctor has liberally issued the disability certificates without any competence, obviously against some consideration.

13. What is held by the Apex Court in paragraphs 11 & 12 of the judgment in case, titled as, Raj Kumar vs Ajay Kumar and others, Civil Appeal No. 8981/2010, reported as (2011) 1 SCC 343, is reproduced hereunder:

"11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized

texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

12. 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 giving liberal disability certificates 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 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."

14. Since, here also, Dr. N.D. Dar has issued ready-to-use disability certificates in favour of claimants herein and many others without proper medical assessment nor was competent to issue such certificates, as such this Court vide order dated 24.09.2021 directed the Chief Medical Officer, District Hospital, Doda to constitute a Medical Board to ascertain the exact percentage of disability, if any, of the claimants in all these four matters. Further, Director Health Services, Jammu was directed to see into the conduct of Dr. N.D. Dar and take appropriate steps. Accordingly, in terms of the directions issued by this Court, the Medical Board examined all the four claimants.

15. In the disability certificate issued by Dr. N.D. Dar in respect of Ghulam Qadir, it has been certified that the percentage of disability is more than 70% and is permanent in nature. Whereas, the Medical Board, so constituted in terms of the

directions passed by this Court on 24.09.2021, has opined that there is no permanent disability in respect of claimant Ghulam Qadir.

16. In the disability certificate issued by Dr. N.D. Dar in respect of Abdul Hamid, it has been certified that the percentage of disability is more than 80% and is permanent in nature. Whereas, the Medical Board has opined that there is five percent permanent disability in relation to right upper limb in respect of claimant Abdul Hamid.

17. In the disability certificate issued by Dr. N.D. Dar in respect of Gulshana Begum, it has been certified that the percentage of disability is more than 50% and is permanent in nature. Whereas, the Medical Board has opined that there is no permanent disability in respect of claimant Gulshana Begum.

18. In the disability certificate issued by Dr. N.D. Dar in respect of Ajaz Ahmed, it has been certified that the percentage of disability is more than 50% and is permanent in nature. Whereas, the Medical Board has opined that the permanent disability is not more than five percent in respect of claimant Ajaz Ahmed.

19. Thus, from the examination of Medical Board it is clear that there is no permanent disability in respect of claimants Gulshana Begum and Ghulam Qadir; whereas there is only five percent permanent disability in relation to right upper limb in respect of claimant Abdul Hamid and not more than five percent disability in respect of claimant Ajaz Ahmed. Thus, it is clear enough that Dr. N.D. Dar had issued such disability certificates only for extraneous considerations and in active connivance with beneficiaries of such certificates.

However, the learned Tribunal while accepting the medical certificates and without discussing evidence in totality in this regard has awarded exorbitant compensation in favour of claimants. Certainly there was a lapse on the part of Presiding Officer of learned Motor Accidents Claims Tribunal, Doda. Before awarding compensation, the learned Tribunal ought to have directed for constitution of the Medical Board instead of relying upon ready-to-use disability certificates. Even the interest awarded by the learned Tribunal is on higher side.

20. Viewed thus, I deem it proper to allow all the appeals by reducing the amount of compensation. Ordered accordingly. It is hereby ordered that:

i. since there is no permanent disability in respect of claimant Ghulam Qadir as per the examination of Medical Board (whereas the learned Tribunal wrongly took the permanent disability as 70%), as such the amount of compensation in respect of claimant Ghulam Qadir is reduced by 60% of the awarded amount, i.e., claimant Abdul Hamid shall be entitled to a total compensation of Rs.1,44,000/- (Rupees one lac and forty four thousands only) minus the interim compensation, if already received, which shall carry six percent interest from the date of filing of the claim petition till its realization. The excess amount along with interest accrued on the excess amount, be returned to the appellant-insurance company.

ii. since there is no permanent disability in respect of claimant Gulshana Begum as per the examination of Medical Board (whereas the learned Tribunal wrongly took the permanent disability as 50%), as such the amount of compensation in respect of claimant Gulshana Begum is reduced by 60% of the awarded amount, i.e., claimant Gulshana Begum shall be entitled to a total compensation of Rs.88,000/- (Rupees eighty eight thousands only) minus the interim compensation, if already received, which shall carry six percent interest from the date of filing of the claim petition till its realization. The excess amount along with interest accrued on the excess amount, be returned to the appellant-insurance company against proper receipt.

iii. since there is only five percent permanent disability in relation to right upper limb in respect of claimant Abdul Hamid as per the examination of Medical Board (whereas the learned Tribunal wrongly took the permanent disability as 80%), as such the amount of compensation in respect of claimant Abdul Hamid is reduced by 50% of the awarded amount, i.e., claimant Abdul Hamid shall be entitled to a total compensation of Rs.1,95,000/-(Rupees one lac and ninety five thousands only) minus the interim compensation, if already received, which shall carry six percent interest from the date of filing of the claim petition till its realization. The excess amount along with interest accrued on the excess amount, be returned to the appellant-insurance company against proper receipt.

iv. since there is not more than five percent disability in respect of claimant Ajaz Ahmed as per the examination of Medical Board (whereas the learned Tribunal wrongly took the permanent disability as 50%), as such the amount of compensation in respect of claimant Ajaz Ahmed is reduced by 50% of the awarded amount, i.e., claimant Ajaz Ahmed shall be entitled to a total compensation of Rs.1,60,000/- (Rupees one lac and sixty thousands only) minus the interim compensation, if already received, which shall carry six percent interest from the date of filing of the claim petition till its realization. The excess amount along with interest accrued on the excess amount, be returned to the appellant-insurance company against proper receipt.

21. As per the status report filed on behalf of Director Health Services, Jammu, Dr. N.D. Dar has since been retired from service with effect from 31.03.2019. Since Dr. N.D. Dar has clearly conducted grave professional misconduct thereby issuing number of Permanent Disability Certificates, though being not competent to issue such certificates, and the beneficiaries of said certificates managed to get hefty amount of compensation from the learned Motor Accidents Claims Tribunals from time to time without there being any such disability thereby causing wrongful loss to the insurance companies, as such competent authority is hereby directed to conduct inquiry into the conduct of Dr. N.D. Dar after issuing notice to him as to why his license as a doctor be not cancelled/terminated immediately thereby removing his name from the list of medical practitioners and he be debarred from practicing as a Doctor henceforth. Director Health Services to submit the compliance report/action taken report in this

regard before the Registrar (Judicial) of this Court positively within a period of three months from the date of delivering this judgment. If the Director Health Services, Jammu fails to do the needful within the period prescribed, Registrar (Judicial) to frame a separate robkar against him/her and after issuing notice to him/her, list the same before the Court for appropriate orders.

22. Registrar (Judicial) is directed to forthwith send a copy of this judgment to the Director Health Services, Jammu for doing the needful.

23. Registrar (Judicial) is also directed to circulate this judgment/order to all the Presiding Officers dealing with such cases regarding compensation including Motor Accidents Claims Tribunals and Labour Courts in the UT of J&K and UT of Ladakh.

24. Record of the learned Tribunal be remitted back along with a copy of this judgment.