
(2011) 04 SHI CK 0234
In the High Court Of Himachal Pradesh
Case No : FAO No. 288 of 2004

Pritam Chand

APPELLANT

Vs

Ram Krishan Gaur and Others

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0234

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This appeal by the claimant has been filed for enhancement of compensation and therefore, only the facts relevant are being given.

2. The undisputed facts are that the Appellant suffered multiple injuries in a motor vehicle accident. He suffered fracture of his arm and legs. He immediately went to Pawar Nursing Home, Paonta Sahib where he was given first aid and thereafter sent for treatment to Bhandari Hospital at Vikas Nagar where he remained admitted from 31.1.2003 to 16.2.2003. The learned Tribunal has awarded Rs. 43,000/- to the Appellant on account of medical and transport expenses after perusing the bills which amount to Rs. 42,119/- in all. No other bill has been proved on record. In addition to this, the claimant was awarded Rs. 7,000/- for gratuitous services rendered, though there was virtually no evidence in this regard. The learned Tribunal has also awarded Rs. 43,000/- to the Appellant for pain and suffering and loss of comforts inclusive of his future medical treatment. In addition to this, the Appellant was also awarded Rs. 14,000/- as loss of income for four months.

3. The main grievance of the Petitioner is that the disability certificate Ext. PX shows that he has suffered 10% disability and therefore, his future loss of income should have been assessed on this basis. At the outset, it may be stated that the main source of income of Appellant is as part time postman and there is

nothing on record to show that he has been removed from service or that his source of income is hampered in any way. Furthermore, the disability certificate has not been proved in accordance with law. Mr. Amardeep Singh has argued that, since the disability certificate was permitted to be exhibited without any objection and no cross-examination was directed qua this document, the same should be taken at its face value. He in support of his contention placed reliance on the decision of learned Single Judge of this Court in *Shashi Bala Bhalaik and Ors. v. State of H.P. and Ors.* Latest HLJ 2010 (HP) 1448 wherein the learned Single Judge held as follows:

Another submission made by learned Counsel for the Respondents was that none of the documents, submitted by the Plaintiff, was *per se* admissible and, therefore, they cannot be looked into. It is true that documents were tendered in evidence by the Plaintiff himself, while appearing as his own witness and the same are not public documents, but then the Defendants raised no objection when these documents were tendered in evidence. It is quite likely that had any objection been raised during the course of trial, Plaintiff might have examined the relevant witnesses to prove the documents. Not only that no objection was raised, but no cross examination was directed qua these documents, when Plaintiff was in the witness box as PW-2.

4. The aforesaid judgment was given in the peculiar facts of that case. Without entering into any controversy in this regard, it would be pertinent to mention that as far as disability certificates are concerned, there are clearcut judgments of the Apex Court which lay down that the disability certificate must be proved by the doctor who issues the same. In fact, in *National Insurance Co. v. Nant Ram and Ors.* Latest HLJ 2005 (HP) 153, this Court had held that all documents which are not public documents must be proved in accordance with law. A disability certificate is not a public document and must be proved by examination of the doctor.

5. The Apex Court in *Rajesh Kumar v. Yudhvair Singh and Anr.* 2008 ACJ 213, held that no reliance can be placed on a disability certificate where the doctor has not been examined, because it is not known, on what basis the certificate was issued. The Apex Court clearly held that unless the author of the certificate was examined, the certificate is not admissible in evidence.

6. Thereafter the Apex Court in *Raj Kumar Vs. Ajay Kumar and Another*, again dealt with this matter in detail and again cautioned the Tribunals that they should not place reliance on "ready to use" disability certificates without proper medical assessment. The Apex Court noted that there were several cases where unscrupulous doctors without even treating the injured had issued the disability certificates. Even when disability certificates are given by Medical Boards, they may be accepted subject to their being proved in accordance with the provisions of the Indian Evidence Act. The Tribunals must make it a point to require the evidence of the doctor who either treated the injured or who assessed the permanent disability to be examined. The Apex Court clearly held that 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.

7. Following the aforesaid judgment of the Apex Court, this Court in CMPMO No. 227 of 2009, titled as Oriental Insurance Co. v. Parveen and Ors. held that the examination of the doctor is necessary before the reliance can be placed to the disability certificate. Therefore, no reliance can be placed to the disability certificate.

8. Hence there is no merit in the appeal which is rejected. No costs.