

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

**Coram : HON'BLE SHRI RAJEEV GUPTA, C.J. &
HON'BLE SHRI SUNIL KUMAR SINHA, J.**

Misc. Appeal No. 19 of 2002

**APPELLANT
APPLICANT**

Ku. Rashim aged 4 ½ years, D/o
Late Rajendra Singh Kothari,
Minor, through natural guardian
and Elder father (Bade Papa)
(Elder brother of applicant's father)
Kanhaiya Lal Ji Kothari S/o
Kanwar Lal Kothari, R/o
Rajnandgaon, Tahsil and District
Rajnandgaon.

Versus

**RESPONDENTS
NON-APPLICANTS**

1. Miraz Ahmed S/o Abdul Kayyum
C/o M/s Steel Trading Company,
G.E. Road, Bhilai, District Durg
Evam C/o Steel Transport,
Bhanpuri, Bilaspur Road, Raipur,
Tahsil and District Raipur
(Owner Truck No. 23 B-0571).
2. Suhail Ahmed S/o Sagir Ahmed,
R/o Bilaigarh, Thana Rajganjpur,
District Sundergarh (Orissa) &
C/o Steel Transport Bhanpuri,
Bilaspur Road, Raipur, Tahsil and
District Raipur,
(Driver of Vehicle No./Truck No.
MP 23B 0571).
3. New India Insurance Company
Limited, Type Division 121400,
New India Center, 17-A, Kuprej
Road, Mumbai 400 039
(Insurance Company of Vehicle
No. MP 23B - 0571)

**MEMORANDUM OF APPEAL UNDER SECTION 173 OF THE
MOTOR VEHICLES ACT, 1988**



Present : Smt. Renu Kochar, learned counsel for the appellant.
None for respondents No. 1 and 2.
Shri Dashrath Gupta, learned counsel for respondent
No.3.

ORDER
(31st July, 2009)

The following order of the Court was passed by
Rajeev Gupta, C.J.:

The appellant is seeking enhancement of the compensation awarded by the Second Additional Motor Accident Claims Tribunal, Durg (for short 'the Tribunal') vide award dated 25.08.2001, passed in Claim Case No.84/1991.

2. As against the compensation of Rs.2,50,000/- claimed by appellant/ claimant Ku. Rashim, a minor girl aged about 4 ½ years, by filing a claim petition under Section 166 of the Motor Vehicles Act through her father's elder brother Kanhaiya Lal, for the injuries sustained by her in the motor accident on 14.07.1990, when the Maruti Car in which she was travelling with her parents, brother and sister was dashed by the offending vehicle Truck bearing registration No.MP-23B/0571, the Tribunal awarded a total sum of Rs.25,000/- as compensation along with interest @ 12% per annum from the date of filing of the claim petition till the date of actual payment

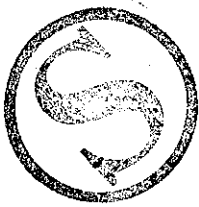
3. Smt. Renu Kochar, learned counsel for the appellant vehemently argued that the Tribunal has erred in awarding low compensation of Rs.25,000/- only though the appellant/ claimant sustained multiple serious injuries including fractures in the motor accident resulting in permanent disability.



4. For the reasons best known to the appellant/ claimant and her father's elder brother Kanhaiya Lal, no doctor was examined before the Tribunal to establish the nature of the injuries said to have been sustained by the appellant/ claimant in the motor accident and the fact that those injuries resulted in any permanent disability.

5. The question whether the medical certificate produced by the claimant before the Tribunal without examining the Doctor who issued the certificate can be relied upon as substantive evidence for the assessment of the compensation came up for consideration before the Apex Court in the case of **A.P. SRTC vs. P. Thirupal Reddy**, reported in (2005) 12 SCC 189, wherein it was observed in para 6 as under :

"6. After hearing learned counsel for the respondent-claimant who made an attempt to support the order of the High Court, we find that there was no justification for the High Court to rely on the disability certificate issued by Dr. Sudhakar Reddy and enhance the compensation by treating the injury as permanent disability to be 45 per cent. The High Court committed gross error in overlooking the fact that Dr. Sudhakar Reddy's medical certificate was rejected by the Tribunal for non-examination of that doctor. The Tribunal has determined the physical disability at 15 per cent on the basis of the deposition of Dr. K.M. Mitra and awarded a just and fair compensation. The High Court erred in disturbing the same and enhancing the compensation. Consequently, we allow this appeal, set aside the impugned order and restore the award of the Claims Tribunal. The respondent-claimant is allowed to withdraw the amount of compensation awarded by the Tribunal, if it has not already been withdrawn."



6. The Apex Court in a recent dictum in the case of **Rajesh Kumar alias Raju vs. Yudhvir Singh and another**, reported in (2008) 7 SCC 305, reiterated the same view with the following observations in para 11 :

" 11. The certificate in question in this case was obtained after two years. It is not known as to whether the Civil Surgeon of the hospital treated the appellant. On what basis, such a certificate was issued two years after the accident took place is not known. The author of the said certificate had not been examined. Unless the author of the certificate examined himself, it was not admissible in evidence. Whether the disability at 60% was calculated on the basis of the provisions of the Workmen's Compensation Act or otherwise is not known. It is also not known as to whether he was competent to issue such a certificate. It even does not appear that the contentions raised before us had either been raised before the Tribunal or the High Court. The Tribunal as also the High Court, therefore, proceeded on the materials brought on record by the parties. In absence of any contention having been raised in regard to the applicability of the Workmen's Compensation Act which, in our opinion, ex facie has no application, the same, in our opinion, cannot be permitted to be raised for the first time."

7. In view of the above quoted *dicta* of the Apex Court in the cases of **A.P. SRTC vs. P. Thirupal Reddy (Supra)** and **Rajesh Kumar alias Raju vs. Yudhvir Singh and another (Supra)**, the medical certificate produced by the appellant/ claimant before the Tribunal without examining the Doctor who had issued the said certificate, cannot be taken into consideration for enhancement of the compensation in the case.

8. We, therefore, do not find any scope for enhancement of the compensation awarded by the Tribunal.



9. The appeal filed by the appellant/ claimant for enhancement of the compensation, therefore, is liable to be dismissed and is hereby dismissed.

10. No order as to costs.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

Subbu