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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**M.A. No. 624 of 2005**

**Appellant**  
**Claimant**

: Ringai, W/o Charan Singh, aged about 61 years, occupation Cultivator & Housewife, R/o village Kalyanpur, PS Jainagar, Tahsil Surajpur, Distt. Surguja (CG).

**Versus**

**Respondents**  
**Non-applicants**

: 1. Shamsrej, S/o Kamrujama, Caste Muslim, aged about 35 years, R/o Parradand, PS & Tahsil Ambikapur, District Surguja (CG).

(Owner & Driver)

2. The Oriental Insurance Company Limited, through Branch Manager, Branch Office-Sadar Road Ambikapur, District Surguja (CG).

(Insurer)

**APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT**

**(SB: Hon'ble Mr. N.K. Agarwal, J.)**

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**Present** : Shri Atanu Ghosh, Advocate for appellant.

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**ORAL ORDER**

**(Passed on 31<sup>st</sup> day of March, 2010)**

1. The instant appeal has been preferred by the appellant, seeking enhancement of compensation against the award dated 28.02.2005, passed by the IInd Additional Motor Accident Claims Tribunal (FTC), Surajpur, Distt. Surguja (for short 'the Tribunal') in claim case No. 12/02.
2. The brief facts of the case according to the appellant are that, on 09.09.1999, while the appellant was traveling in Jeep bearing registration No. MP 27/T/0209, the said Jeep turned turtle due to which the appellant sustained multiple injuries.
3. The appellant preferred an application before the Tribunal under Section 166 of the Motor Vehicles Act, claiming compensation to the tune of Rs. 6,00,000/- for the injuries sustained by her on account of the said accident.



4. The Tribunal, on a close scrutiny of the evidence led by the parties, the material available on the record, and submissions of the parties, awarded total amount of Rs. 3,000/- as compensation in favour of the appellant.
5. Learned counsel for the appellant would submit that although the Doctor has not been examined in this matter, but looking to the fact that the appellant sustained multiple injuries, and amount awarded is shockingly on lower side, this appeal may be allowed and the amount of compensation be enhanced.
6. I have heard the learned counsel appearing for the appellant and perused the award impugned.
7. The Supreme Court in case of **A.P. SRTC v. P. Thirupal Reddy**, reported in **(2005) 12 SCC-189**, 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."

8. The Supreme Court in a recent dictum in case of **Rajesh Kumar alias Raju v. Yudhvīr 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."

9. A Division Bench of this High Court in case of **Pradeep Kumar Sahu vs. Sarupa Sahu & another** vide order dated 31<sup>st</sup> March, 2009, placing its reliance upon the dicta of Supreme Court in the cases referred above held in para 8 as under:

"8. In view of the above quoted dicta of the Apex Court in the cases of **A.P. SRTC v. P. Thirupal Reddy (supra)** and **Rajesh Kumar alias Raju v. Yudhvir Singh and another (supra)**, the certificate produced before the Tribunal in the absence of examination of the Doctor issuing the certificate is neither admissible in evidence nor can be taken into consideration as substantive evidence for assessment of the compensation in the case."

10. Admittedly, the claimant in his own wisdom did not examine Doctor to prove the injury sustained in the accident and to prove the resultant loss. In view of the dicta of the above referred cases, the injury reports, certificates produced, in the absence of examination of the Doctor issuing the injury reports, certificates are neither admissible in evidence nor can be taken into consideration as substantive evidence for enhancement of compensation in the case.
11. For the reasons mentioned hereinabove, I do not find any scope for enhancement of the compensation awarded by the Tribunal.
12. The appeal filed by the appellant for enhancement of the compensation is therefore liable to be and is hereby dismissed. No order as to costs.

Sd/-  
N.K. Agrawal  
Judge

Sahu