

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM: HON'BLE SHRI RAJEEV GUPTA, C.J.
HON'BLE SHRI RANGNATH CHANDRAKAR J.

Misc. Appeal No. 1103 of 2005

Appellant : Mohd. Hadish, S/o. Shahabuddin aged
Claimant about 32 years, R/o. Nawapara,
Surajpur, Tahsil Surajpur, district
Surguja (C.G.)

Versus

Respondents 1. Jitendra Kumar, S/o. Vijay Shankar
Non-applicants Pandey, aged about 34 years, driver,
R/o. J.M.Q. Colony, Vishrampur, Tahsil
Surajpur, District Surguja (C.G.)
Driver

2. United India Insurance Company
Limited, through Branch Manager,
Branch Office Near Ram Mandir,
Ambikapur, District Surguja (C.G.)

Memo of appeal under Section 173 of the Motor Vehicles Act.

Present : Shri Ashok Kumar Shukla, learned counsel for the
appellant.
Shri Pankaj Agrawal, learned counsel for respondent
No.2.

ORDER

(30th June, 2010)

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

Shri Ashok Kumar Shukla, learned counsel for the
appellant is heard on admission.

2) Appellant – Mohd. Hadish is seeking enhancement of the
compensation awarded by the First Additional Motor Accident

(24)

Claims Tribunal, Surajpur, District Sarguja (for short 'the Tribunal') vide award dated 26.04.2005, passed in Claim Case No.34/2004.

3) As against the compensation of Rs.10,00,000/- claimed by the appellant/claimant by filing a claim petition under Section 166 of the Motor Vehicles Act for the injuries sustained by him in the motor accident on 19.01.2004, the Tribunal awarded a total sum of Rs.50,000/- as compensation along with interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment.

4) Shri Ashok Kumar Shukla, learned counsel for the appellant vehemently argued that the Tribunal has erred in awarding low compensation of Rs.50,000/- only though the appellant/ claimant sustained multiple serious injuries including fractures in the motor accident resulting in permanent disability to the extent of 60%.

5) For the reasons best known the appellant/ claimant, 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.

6) 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 v. 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."

7) The Apex Court in a recent dictum in the case of **Rajesh Kumar alias Raju v. 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

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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."

- 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 medical certificate and the disability certificate produced by the appellant/claimant before the Tribunal without examining the Doctors who had issued those certificates, cannot be taken into consideration for enhancement of the compensation in the case.
- 9) We, therefore, do not find any scope for enhancement of the compensation awarded by the Tribunal.

(27)

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

Sd/-
Chief Justice

Sd/-
R.N.Chandrakar
Judge

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