

(2007) 03 AHC CK 0215

Allahabad High Court

Case No: None

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Surendra Umrao and Another

RESPONDENT

Date of Decision: March 22, 2007

Acts Referred:

- Evidence Act, 1872 - Section 74, 77
- Motor Vehicles Act, 1988 - Section 163A, 166

Citation: (2008) ACJ 293 : (2007) 2 AWC 2104

Hon'ble Judges: Pankaj Mithal, J; Amitava Lala, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Amitava Lala, J.

The appeal has been preferred by the insurance company on two grounds. Firstly, as per the evidence of the Doctor pain and injury is ordinary in nature, i.e., fracture on the right palm and injuries on the neck and knee. But he was declared as 50% disabled on the basis of the disability certificate. The disability certificate was not proved through the Doctor/s issued the same. Secondly, calculation of the award is not at par with the Schedule II u/s 163A of the Motor Vehicles Act, 1988.

2. The appeal was heard on informal papers upon issuance of the notice to the caveator/claimant/ respondent No. 1, both the parties agreed hearing on such terms.

3. Learned Counsel appearing for the respondents contended that in view of the judgment of Rajasthan High Court in Rajasthan State Transport Corporation and Anr. v. Devilal and Ors. 1990 (1) TAC 672, the certificate issued by the medical team is a public document, therefore, there is no necessity of the examining the witness.

4. According to us, although the judgment of the Rajasthan High Court in Rajasthan State Transport Corporation and another (supra) in a single Bench judgment which only have persuasive value but while going through para 7 of it we find judgments of the Supreme Court in *M. M. Rajappa v. Mal Haha Uru Bajappa* AIR 1983 SC 1633 and also in *Pt. Parmanand Katara v. Union of India* and Ors. 1989 (III) SVLR 137, are quoted where it was categorically held, as per Sections 74 and 77 of the Evidence Act, that the documents forming acts or records of the acts of public officers are public documents. Contents of public documents may be proved by producing" their certified copies vide Section 77 of Evidence Act. It was further held that if a document is a certified copy of a public document, it need not be proved by calling a witness. In the later judgment Supreme Court discouraged necessity of calling the Doctor as witness unnecessarily by observing the following:

We also hope and trust that our law courts will not summon a medical professional to give evidence unless the evidence is necessary and even men in this profession are not made to wait and waste time unnecessarily and it is known that our law courts always have respect for the men in the medical profession and they are called to give evidence when necessary and attempts are made so that they may not have to wait for long. We have no hesitation in saying that it is expected of the members of the legal profession which is the other honourable profession to honour the persons in the medical profession and see that they are not called to give evidence so long as it is not necessary. It is also expected that where the facts are so clear it is expected that unnecessary harassment of the members of the medical profession either by way of requests for adjournments or by cross-examination should be avoided so that the apprehension that the man in the medical profession have which prevents them from discharging their duty to a suffering person who needs their assistance utmost, is removed and a citizen needing the assistance of a man in the medical profession received it.

5. Therefore, we do not find any cogent reason not to accept the disability certificate issued by a team of experts. So far as the second point in respect of assessment of compensation and suffering as per Section 163A is concerned, we find that the application is made u/s 166 of the Act, therefore, such principle under the Schedule II cannot be applicable in the present case. In *R. D. Hattangadi v. Pest Control (India) Pvt. Ltd.*, 1995 (1) TAC 557 (SC) : 1995 (1) AWC 39 (SC), the Supreme Court also held, although in exceptional circumstances, that in case of pain, suffering and loss of amenities of life even 100% compensation can be awarded. Therefore, we do not find any cogent reason to interfere in the appeal whereunder 50% disability has been ascertained by the court below in the facts and circumstances of the case.

6. The appeal is, therefore, dismissed. Interim order, if any, in any connected application stands vacated.

7. However, no order is passed as to costs.