

**Nitin Vs. Radhis**

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**SooperKanoon Citation :** [sooperkanoon.com/512772](http://sooperkanoon.com/512772)

**Court :** Madhya Pradesh

**Decided On :** Jul-16-2002

**Reported in :** III(2002)ACC489

**Judge :** A.K. Gohil, J.

**Appellant :** Nitin

**Respondent :** Radhis

**Judgement :**

ORDER

**A.K. Gohil, J.**

1. The appellant/claimant has filed this appeal under Section 173 of Motor Vehicles Act against the award passed by the Claims Tribunal, Dhar in Claim Case No. 05/1996 whereby the Tribunal granted only a sum of Rs. 23,836.85 paise along with 12% interest.

2. The submission of Mr. D.D. Vyas, learned Sr. Counsel is that an opportunity to examine the doctors on commission was not granted by Tribunal and the applications were dismissed without any valid reason. The medical certificates were already on record. On 11.7.1996 before the Tribunal he had filed an application for recording the evidence of Government Doctor Sarvate from Bhoj Government Hospital, Dhar on commission and had filed another application dated

23.11.1996 by which he wanted to produce the another doctor to prove the disability certificate, which was rejected. He further submitted that on account of the injury the claimant's Spleen was removed and for proving the aforesaid disability the Tribunal has not granted any opportunity and dismissed the application, therefore, this is a fit case for remand.

3.1 have heard the learned Counsels for the parties and perused the order- sheet dated 11.7.1996 and also dated 23.11.1996, the Tribunal has not assigned any valid reason for rejecting these two applications, when the appellant wanted to examine the Government Doctor, then either Court should have issued summons or if the Doctor was not in a position to attend the Court then in such circumstance his application for recording the evidence of Doctor on commission should have been allowed by the Tribunal. Now as per recent amendment in the Civil Procedure Code which has come into force w.e.f. 1.7.2002. The evidence can be recorded by the Commissioner as per the amended provisions of Rule 4 Order 18 of the C.P.C.

4. Therefore, in view of the aforesaid submissions and in view of the aforesaid fact that the Court has rejected both the explanations without assigning any valid and cogent reasons. This appeal is allowed. The impugned award passed by the Tribunal is set aside. The case is remitted to the M.A.C.T., Dhar to record the evidence of Doctors and for that necessary steps shall be taken by the Tribunal either to call them in the Court or to examine on Commission. Tribunal to dispose of the case finally within four months.

5. Parties to bear their own costs, record of the Court below be returned, immediately.