

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.577 of 2013

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Pramod Kumar @ Promod Kumar Khatan

.... Appellant/s

Versus

Pawan Kumar Singh & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Raj Kumar Choudhary, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

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10-08-2015

Heard counsel for the appellant and the respondents.

In this case the appellant is challenging the judgment dated 7th August 2012 and the order dated 10th September 2012 passed by Sri Ashok Kumar Srivastava, Ad hoc A.D.J. 1st cum-Claims Tribunal, Munger in Claim Cased No. 27 of 2004 by which he has rejected the claim of compensation of Rs.5,50,000/- along with 18 per cent interest per annum.

The facts of the case is that the appellant along with other passenger was traveling from Munger to Sangrampur in a bus bearing Regd. No. BR.10P 9541. As soon as the bus reached near Kicheniya Pokhar, the driver lost balance and the vehicle turned turtle in the left side of the road. This accident took place on account of rash and negligent driving in which the appellant had received fracture in chest ribs. He was first admitted in the clinic of Dr.S.K. Mandal and later on he was shifted in the clinic of Dr. R.K.Gupta, Orthopedic Surgeon, Munger. Claim has been

made that the injury on the person of applicant made him incapacitated to earn his livelihood.

It has been claimed that after the incident, local people extended help to the victims, took out the appellant and others and the victims were admitted in different hospitals and the appellant was admitted in the clinic of Dr. S.K.Mandal. The accident was grave, large number of persons received injuries, including some of them lost their lives.

Police instituted Sangrampur P.S.Case No. 69 of 2003 u/s 279, 337, 338, 304(A) IPC against the driver and the owner of the vehicle. The appellant after recovery, filed claim case u/s 166 of the M.V.Act registered as Claim Case No. 27 of 2004. The Tribunal has disbelieved the story of the appellant on the ground the name of the appellant has not been mentioned in the FIR nor in the charge-sheet nor during investigation the Police has recorded the statement of the appellant so much so it is mandatorily required under Rule 226 of the M.V.Rules 1992 to institute FIR with regard to the accident.

Counsel for the appellant submits that the court below has fallen in error, misdirected himself rejecting the claim on the ground that neither the FIR nor the charge-sheet contains any name of any person who received injuries in the accident so much so that the court below has fallen in error by holding that the



FIR was not recorded of the accident whereas the fact is that the FIR was recorded by the Police as Sangrampur P.S./Case No.69 of 2003 so much so he has fallen in error on account of the fact the name of none of the victim has been mentioned either in the FIR or in the charge-sheet. He has also pointed out that the Tribunal has not discussed the oral evidence of witnesses who were examined during the trial even the co-passenger who was traveling in the said bus had given his statement but the court below has conveniently ignored it. He has further submitted that the court below has failed to consider his request to the Police vide Ext-7 requested the Officer in-charge of the Sangrampur Police Station to include his name in the list of victims of accident as he was being treated in the Hospital of Dr. R.K.Gupta, Orthopedic Surgeon.

Counsel for the Insurance Company submitted that the court below has not committed any error in refusing to grant benefit to the appellant as on analysis of evidence, it was found that he could not make out a case of receiving of any injury arising out of the motor accident.

Having considered the rival contention of the parties, it appears that the court below has rejected the claim of the appellant as his name is not there in the FIR nor in the charge-sheet and the Police has not recorded any statement of the

appellant during investigation.

On perusal of the FIR and the charge-sheet it appears that the Police has not recorded the name and address of any victim and, as such, one of the grounds assigned by the Tribunal is completely misconceived and cannot be accepted for refusal of claim of appellant, in as much as the court below has not examined the oral evidence of the appellant or co-passenger of the said bus so much so, Ext-7 is letter addressed to the Officer In-charge, Sangrampur in connection to Sangrampur P.S.Case No. 69 of 2003 where he has specifically stated that he is one of the victims arising out of the accident of bus was being treated in the Nursing Home of Dr. R.K.Gupta.

In such view of the matter, the court below has failed to consider the relevant materials as aforesaid which made the order unsustainable in laws and accordingly the judgment and order passed by the court below is set aside and the matter is remanded back to consider the oral and documentary materials in accordance with law.

Accordingly, the appeal is allowed to the extent as indicated above. Office is also directed to return the lower court records to the court concerned forthwith.

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(Shivaji Pandey, J)