

CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
APPELLATE SIDE

C.O. 18 of 2020

National Insurance Company Ltd.
Vs.
Leena Baxla and others

Mr. Gobinda Saha.....for petitioner

This is an application under Article 227 of the Constitution of India challenging order No. 27 dated 10-12-2019 passed by the learned Additional District Judge, Fast Track Court / the learned Judge, Motor Accident Claims Tribunal at Jalpaiguri in M.A.C. Case No. 247 of 2017.

From the impugned order, it is found that the opposite party No. 2 (i.e. the petitioner herein) took several adjournments on different dates for adducing evidence and always failed and neglected to do so which has been recorded in the impugned order. The petitioner wanted to produce, by filing one application for issuance of summons, one Bhuddadeb Ghosh as witness but it was exposed by the claimant that said Mr. Ghosh had already been examined.

The petitioner submitted before the tribunal as also before this Court that it was a mistake to call Mr. Ghosh as witness again ; the petitioner actually wanted to call one Mr. Lama, who was the Investigating Officer of the criminal case initiated against the offending vehicle. The petitioner has also intimated that the said Investigating Officer Mr. Lama has left his job from police service.

The petitioner also submits that even if the petitioner is allowed to call the present Officer-in-Charge of the Mal police station i.e. the concerned police Station, that will serve its purpose.

From the impugned order I found that first, the petitioner for the reasons best known to it, wanted to call a witness who had already been examined and secondly it wanted to produce a particular witness (Mr. Lama) but now submits that in the place of the said particular witness, even if the Officer-in-Charge of the concerned police station is called as witness, that will also serve its purpose of defence.

From the facts and circumstances as aforesaid, it is evident that the petitioner is

only trying to cause delay to the adjudication of the claim application. It is not understood that if the present Officer-in-Charge of the concerned police station is required to be summoned as witness which would serve the purpose of the petitioner to defend the claim, why it was not done in September 2019 when said Buddhadeb Ghosh was summoned as witness again, though according to the petitioner it wanted to call one Mr. Lama. Now the petitioner is saying, said Mr. Lama is not essential for giving evidence, the present Officer-in-Charge of the concerned Police Station is sufficient for adducing evidence.

Learned Advocate representing the petitioner has relied upon two judgments reported in **2015 A.C.J. 1517** (*Oriental Insurance Co. Ltd. Vs. Puniram*) and **2014 A.C.J. 1269** (*Puniya Kalen vs. State of Assam*). Relying upon those two judgments, the petitioner submits that the very ownership of the offending vehicle is questionable. When the learned Advocate of the petitioner was asked by this court whether such an objection had been taken in its written statement before the Tribunal, he submitted that it had been taken in paragraph 9 of the written statement.

On a plain reading of paragraph 9 of the written statement it is found that the ownership of one Mr. Shyamal Dutta has been admitted by the petitioner. No objection at any point of time has been raised, as appears from the petition, including its annexures with regard to the ownership of the vehicle. Such contention is being raised for the first time here. However, such contention is not at all relevant for adjudication of the present petition, it is only mentioned to record the conduct of the petitioner in the claim case.

After considering the facts and circumstances of the case and after perusing the impugned order and the petition and further considering carefully the submissions made by the petitioner, I do not find any infirmity in the impugned order and also I do not find any infirmity in reaching the decision of rejecting the adjournment application filed by the petitioner herein and in passing the order of closing the defence witness. The tribunal granted the opposite party No. 2 / petitioner enough opportunity to defend the case but the petitioner herein has only delayed the matter.

There is no jurisdictional error on the part of the Tribunal and in passing the impugned

order the tribunal has not acted with material irregularity.

The application is dismissed for the reasons stated above and as it is found by this Court that the Insurance Company i.e. the petitioner has tried hard to delay the adjudication of the claim case and has actually caused delay in adjudication a cost of Rs. 1,00,000/ (Rupees One lakh only) is imposed upon the petitioner-Insurance Company to be paid to the District Legal Services Authority, Jalpaiguri by issuing a cheque within 45 days from the date of this order.

Thus, C.O. 18 of 2020 is dismissed with costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon observance of requisite formalities.

(Abhijit Gangopadhyay, J.)