

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1512 of 2009
with
IA No. CAN 2 of 2009 (CAN 8336 of 2009)

Smt. Gita Sarkar & Ors.
Vs.
Rajesh Bhattacharya & Anr.

Mr. Debasis Sur
Mr. Himadri Shekhar Paul
Mr. Angshuman Patra
... For the appellants/claimants

Mr. Parimal Kumar Pahari
... For the respondent no.2/Insurance Co.

This appeal is directed against the judgment and order dated 12th February, 2007 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track, 3rd Court, Asansol, in connection with MAC Case No.07 of 2005/239 of 2004 whereby the learned Tribunal dismissed the claim petition on the ground that the registered owner of the offending bus was not impleaded in the claim petition.

The claim petition under Section 166 of the Motor vehicles Act, 1988 was filed on account of death of one Ajit Sarkar in a motor accident occurred on 3rd March, 2004 at about 11 a.m. by the involvement of one Bus, bearing registration no.WB-37/2212. While the said Ajit Sarkar was travelling with his motor cycle, at the time the said bus coming with high speed and in rash and negligent

manner, dashed the motor cycle. As a result, Ajit Sarkar sustained injury on his person and he was treated at Bokaro General Hospital and ultimately succumbed to his injuries.

The owner of the offending vehicle did not contest the claim petition but the National Insurance Company Limited contested the case by filing the written statement denying all material averments of the claim petition.

In course of trial, three witnesses were examined. In course of their evidence, a good number of documents were admitted in evidence.

Learned Judge of the Tribunal after assessing the entire evidence on record, returned his finding that Janardan Kundu was the registered owner but he was not impleaded in the claim petition and instead of that one Rajesh Bhattacharya was impleaded as registered owner in the claim petition. On that ground the learned Tribunal dismissed the application.

In course of hearing, Mr. Debasis Sur, learned advocate, appearing on behalf of the appellants/claimants has submitted that after the accident, Janardan Kundu sold out the bus involved in the alleged accident to one Rajesh Bhattacharya and that is why his name was impleaded as owner of the offending bus.

Mr. Parimal Kumar Pahari, learned advocate, appearing on behalf of the respondent no.2/National

Insurance Company Limited has submitted that it is a fit case for remand, giving an opportunity to the appellants/claimants to implead the original registered owner.

Considering all facts and circumstances as well as submission made by Mr. Debasis Sur, learned advocate for the appellants/claimants, I find that the appellants/claimants have documents to show that transfer of the offending bus after the accident from Janardan Kundu to Rajesh Bhattacharya.

Considering all facts and circumstances discussed hereinabove as well as considering the nature of case under the beneficial legislation, I am of the opinion that this case should be remanded back to the learned Tribunal for disposal afresh after giving an opportunity to the appellants/claimants to prove the case of transfer of the vehicle.

With the aforesaid observation, the judgment and order dated 12th February, 2007 passed in MAC Case No.07 of 2005/239 of 2004, stands set aside and the learned Tribunal is requested to dispose of the claim petition afresh, after giving an opportunity to the parties of this case to adduce evidence, as early as possible.

The appeal, being FMA 1512 of 2009, stands disposed of.

All pending applications, if there be any, stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)