

S/L No. 17
13.02.2023
Ct-237
(PA.RD)

FMA 276 of 2009
With
CAN 1 of 2009 (CAN 4582 of 2009)
With
CAN 2 of 2010 (CAN 4576 of 2010)
(applications not in the file)
With
CAN 3 of 2013 (CAN 5547 of 2013)

Chalauddin Sarkar
Vs.
Divisional Manager,
New India Assurance Co. Ltd. & Anr.

Mr. Krishanu Banik, Advocate
.... For the petitioner

Mr. M.P. Chakraborty, Advocate
Ms. Ratnadipa Karmakar, Advocate
Ms. Swarnali Biswas, Advocate
... for the respondent

This appeal is directed against the judgment passed by the Motor Accident Claims Tribunal, Dakshin Dinajpur, Balurghat, in connection with claim case no. 67 of 2005 under Section 166 of the Motor Vehicles Act, whereby, Ld. Judge dismissed the claim petition.

The claim petition was filed on account of injury sustained by one Chalauddin Sarkar in a motor accident alleged to have been taken place on 25.05.2004 at 18.25 hours by the involvement of one mini truck bearing no. WB 61/0639. At the relevant point of time, said mini truck was proceeding towards Gangarampur from Tapan side with a very high speed and as a result said truck

lost its control and dashed against a road side tree. In effect, petitioner and others sustained severe injury and he was taken to Balurghat District Hospital. At the relevant point of time, he was 40 years of age and having income of Rs. 4,000/- per month from his business. After the accident Tapan PS case no, 77 of 2004 dated 25.05. 2004 under section 279/338/427/304 IPC was started. National Insurance Company Ltd. contested the claim petition by filing written statement denying all averments of the claim petition contending, inter alia, that claimant is not entitled to any compensation.

To prove his case claimant examined himself as PW-1. In his evidence, he has stated that he sustained injury in the accident and admitted in hospital from 25.05.2004 to 08.06.2004 and also he was treated by medical practitioner. In his cross-examination, PW-1 has stated that on the alleged date he was travelling with the vehicle along with his vegetables.

PW-2 claimed himself to be an eye-witness and has testified that he saw the accident due to rash and negligent driving of the truck bearing no. WB 61/0369 and as a result, occupants of the vehicle sustained severe injuries and he rescued the injured person. But, in cross-examination he specifically stated that he did nothing after the accident and he did not inform the accident to the police station. In course evidence,

certified copy of charge sheet, FIR and Insurance Policy was admitted in evidence.

Mr. Banik has submitted that claimant succeeded to prove his case as his name is appearing in the column of witness in the charge sheet.

Ld. Advocate, Mr. M.P. Chakraborty, appearing on behalf of the Insurance Company has referred to the charge sheet and submitted that none of the occupants sustained any injury.

From the entire evidence on record together with FIR & Charge sheet, I do not find any cogent evidence in support of injury sustained by the claimant. Had it been so he would have filed at least a scrap of paper showing his treatment either in any hospital or by any private doctor. Unfortunately, no such evidence has been adduced on behalf of the claimant far to speak of filing disability certificate.

Therefore, I find no reason to interfere with the judgment passed by the Ld. Tribunal in connection with MAC Case no. 67 of 2005.

Accordingly, the instant appeal being no. 276 of 2009 stands dismissed.

The Tribunal Record along with a copy of this order be transmitted back immediately.

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

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De)