

31.07. 2023
item No.2
n.b.
ct. no. 551

FMA 860 of 2004

With

IA No. CAN 1 of 2005(Old No. CAN 1894 of 2005)

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CAN 2 of 2015(Old No. CAN 4849 of 2015)

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CAN 3 of 2015(Old No. CAN 4850 of 2015)

Haripada Halder

Vs.

The New India Assurance Co. Ltd.

Mr. Krishanu Banik

.....for the appellant.

Mr. Rejesh Singh

....For the respondent/Insurance Company.

The instant appeal has been preferred against the judgment dated June 29, 2004 passed by the learned Judge, Motor Vehicle Claims Tribunal, Burdwan in M.A.C. Case Nos. 46/55/286 of 2003/2001/2001.

The brief fact of the case is that the present appellant being the claimant filed one application under Section 166 of the M.V. Act before the learned Tribunal. The Insurance Company contested the case by filing the written statement. Learned Tribunal after hearing both the parties and after going through the evidence on record has dismissed the claim case. Hence this appeal.

Learned advocate for the appellant submitted before this Court that one application is filed on behalf of the claimant being, CAN No.4849 of 2015 under Order 41

Rule 27 of the Code of Civil Procedure to bring out one disability certificate in connection with the instant case.

Learned advocate for the appellant submitted before this Court that the learned Tribunal has committed an error by rejecting the claim application. He pointed out that one application under Section 140 of the M.V. Act was filed initially by the claimant, but the same was dismissed because of which, one appeal was preferred before the Hon'ble Court. Due to pendency of the instant application, the said appeal before the Hon'ble Court was not pressed. He argued that the learned Tribunal has committed an error to opine that as the application under Section 140 of the M.V. Act, has dismissed thus, application under Section 166 of the M.V. Act is not maintainable. He also argued out that the learned Tribunal has committed an error for disbelieving the FIR and other materials in this case. He specifically pointed out that the injury report, disability certificate issued by the Burdwan Medical College and Hospital specifically shows the injury sustained by the injured. He shows the injury report, wherein the cause of injury was stated to be the road traffic accident. He also placed his reliance to the discharge certificate, wherein the disability of the present appellant was specifically mentioned. Thereafter, same outdoor ticket was also mentioned. It is the case of the appellant that after the impugned order was passed, the present appellant appeared before the Board of

Doctors and the Board of Doctors has issued a specific certificate to show the disability of the person to be 90%. He argued that the condition of the claimant is very poor. So, necessary order for compensation may be passed.

Learned advocate appearing on behalf of the Insurance Company submitted before this Court that the ground as mentioned in this appeal is not at all maintainable. The learned Tribunal has specifically observed that the claimant has not able to prove how his injury was connected with the alleged accident. He also pointed out that the evidence of eyewitnesses, and argued, if it can be believed than also the case of the claimant can not be said to be proved.

Learned advocate appearing for the Insurance Company also pointed out that application under Order 41 Rule 27 cannot be permitted to be allowed at this juncture. The impugned order passed by the learned Tribunal on the basis of the documents and attending exhibits of this particular case, which cannot be said to be perverse. He again pointed out that the claimant could not prove his injury and its relation with the alleged accident. He also failed to prove the ingrience of Section 166 of the M.V. Act. Thus, the instant appeal is liable to be dismissed.

Heard the learned advocates and perused the materials on record. It appears to me that the claimant being the injured person, preferred an application under

Section 166 of the M.V. Act. It is true that he was not successful in his application under Section 140 of the M.V. Act. However, the dismissal application under Section 140 of the M.V. Act shall not be debarred the claimant for his claim application under Section 166 of the M.V. Act.

The claimant himself deposed as P.W.1. One eye witnesses and co-passenger of the alleged Bus deposed as P.W.2. During cross-examination, he stated that he was senseless after the Bus was capsized. But, nothing was stated whether he was suffered injury or not. However, if a person became senseless how he can see any co-passenger to suffer accident. It is true that the date of accident of this case is May 22, 2001 and the injury report and the date of admission stated to be May 22, 2001 at 3.00 to 4.00 P.M. The claim petition does not mention the time of accident. However, from P.W.1, it appears to me that he met an accident on May 22, 2001. The specific case being, Galsi P. S. Case No. 86 of 2001 dated May 22, 2001 was started, but no injury report or the discharge certificate issued by the hospital does mention any of the number of the police case. It is face that the FIR does not disclose the name of the claimant and the claimant did not file any document or *prima facie* evidence that he sustained injury in the said accident. The claimant or the P.W. 2 did not file any document or convincing evidence to show that they were met the alleged accident with the bus

at the alleged time except their own evidences. The P.W.2 also said that he did not see the accident. The acquaintance of P.W.1 and P.W. 2 is also not convincing.

The application under Order 41 Rule 27 was filed by the claimant / appellant to use the document i.e. disablement certificate in the instant claim case. On perusing the xerox copy of certificate, it appears that it was issued by the Burdwan Medical College and Hospital. It further appears to me that the certificate was issued on 16.4.2008 i.e. after four years of passing the impugned judgment. The disablement certificate as well as the injury report and the outdoor tickets of the claimant shows that he suffered some fracture in some bones of the lower limb and thereafter some plates were installed; subsequently they were removed. Nothing is there to correlate the server physical condition of the claimant when he appeared before the Hospital as outdoor patient.

Considering the entire aspect and the materials on record before me as also the paper book, it appears to me that the learned Tribunal has perused the entire documentary evidences and passed the impugned judgment/order, which is not at all perverse to the facts and circumstances of the case. The additional evidence sought to be introduced in this appeal appears to extraneous and not related to the facts of this case. Hence, I find no justification to allow the application under Order 41 Rule 27 of the Code of Civil Procedure.

Considering the same, I find no merit to interfere the impugned judgment. Thus, the instant appeal being not meritorious is accordingly dismissed.

Accordingly, FMA 860 of 2004 is disposed of.

Connected CAN applications are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)