

S/L No. 3
16.02.2023
Ct-237
(PA.RD)

FMA 2350 of 2005
With

IA No. CAN 1 of 2008 (CAN 620 of 2008)
(applications not in the file)

Nikhil Singha
Vs.
Oriental Insurance Co. Ltd & Ors.

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

Mr. M.P. Chakraborty, Advocate
Ms. Ratnadeepa Karmakar, Advocate
Ms. Swarnali Biswas, Advocate

... for the respondent/Insurance company

This appeal is directed against the judgment passed by the Ld. Motor Accident Claims Tribunal, Fast Track Court, 2nd Court, Malda, in connection with Motor Accident claim case no. 223 of 2001 under Section 166 of the Motor Vehicles Act, whereby, Ld. Judge dismissed the claim petition.

Claim was made by one Nikhil Singha with a prayer for compensation of Rs. 50,000/- on account of his injury sustained in a motor accident by the involvement of one truck bearing no. WB 53/1943. On 23.01.1999 at about 9.30 hours when claimant was travelling by a Maxi Taxi bearing no. WB 65/1919 towards Malda from Mohodipur, a truck bearing no. WB 53/1943 coming from opposite side with high speed and in reckless manner dashed the said Maxi Taxi. As a result, passengers of Maxi Taxi including the claimant

sustained injury. All injured persons were shifted to Malda Sadar Hospital for medical treatment. After the accident English Bazar Police Station Case no. 48/ 1999 dated 23.01.1999 under Section 279/338/427 of the Indian Penal Code was started and ended with charge sheet against both the driver of the two vehicles.

Both the Insurance Company of two vehicles namely united India Insurance Company & Oriental Insurance Company filed their respective written objection denying all material allegations of the claim petition contending, inter alia, that vehicles were not involved in the accident and claimant is not entitled to any compensation.

To prove the case, claimant examined himself as PW-1. It is testified that in accident, he sustained fracture injury of his right hand and lost his strength of normal working with his right hand. He testified that he was travelling by a Maxi Taxi bearing no. WB 65/1919 and near 'Tin sanko Math' a truck bearing no. WB 53/1943 coming from the opposite side with high speed collided with Maxi Taxi. As a result, he sustained injury. At that time, he was working as a labour having income of Rs. 50/- per day.

In cross-examination claimant (PW-1) has stated that he could not file any document either showing treatment of his fractured hand or regarding expenditure of his treatment. He also could not obtain any disability certificate.

In course of his evidence, photocopy of FIR, charge sheet & report of in-patient were admitted in evidence as

exhibit 1, 2 & 3.

Ld. Tribunal after considering the evidence returned his findings that claimant is not entitled to any compensation because of non-production of bed head tickets and contradictory statement in the claim petition regarding his injury sustained in the alleged accident.

After careful perusal of the entire evidence together with the documents exhibited, I find that there was an accident and 19 persons sustained injuries and police also seized bed head tickets. But, unfortunately, bed head tickets in respect of the claimant has not been produced before the Ld. Tribunal for ascertaining the injury as claim petition itself created a doubt regarding nature of injury alleged to have been sustained by the claimant *albeit* exhibit 3 shows his admission in the hospital for the period from 23.01.1999 to 29.01.1999.

Column number 14 of the claim petition says as follows:-

“ multiple injuries sustained and previous injuries on his right hand and it caused him right hand permanent disabled.”

But, again in column no. 22 claimant stated as follows:-

“.....the injured claimant was treated there from 23.01.1999 to 29.01.1999 as indoor patient and he was further treated by the different private medical practitioners and after the long treatment he lost his hearing capability for ever and

he became permanent hearing disabled person.....”

If we take column number 14 & column number 22 in juxtaposition, I find it difficult to come to any conclusion about nature of injury alleged to have been sustained.

It is needless to mention that claimant did not produce any paper showing his nature of injury. That apart, injury report (exhibit-3) does not bear any official seal of the authority issuing certified copy. Moreso, no disability certificate has ever been filed before the Ld. Tribunal.

In the aforementioned facts and circumstances, I am unable to interfere with the judgement passed by the Ld. Tribunal in connection with Motor Accident Claim Case no. 223 of 2001.

In the result, the instant appeal being no. 2350 of 2005 stands dismissed.

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

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

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

(Bibhas Ranjan De)