

21.3.2024
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Ct. no. 652
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**CO 1612 of 2017
with
CAN 7161 of 2018**

**Pradip Bhattacharjee & Anr.
Vs.
Balai Chandra Patra & Anr.**

Mr. Gopal Chandra Ghosh
Mr. Prasanta Kumar Banerjee
Ms. Indrani Mitra ...for the Petitioners

Mr. Rejesh Singh ...for the O.P. no. 2

Challenging the order no. 71 dated 7.1.2017 passed by the Motor Accident Claim Tribunal cum Additional District Judge, 2nd court, Hooghly in connection with the Misc. Case no. 7 of 2013 arising out of an ex parte Order dated 26th May, 2008, the present application has been preferred, under Article 227 of the Constitution of India.

Opposite party no. 1 herein, Balai Chandra Patra preferred an application under Section 166 of the Motor Vehicles Act before the Tribunal contending that on 22nd February, 2003 at about 9.35 A.M., he was returning home by riding a cycle, when he met an accident caused by vehicle no. WB 25A/0467 and for which the claimant Balai Chandra Pratra sustained injury and had to undergo a major operation at Government Hospital and he thereby became 70% disabled. Accordingly, he

claimed compensation of Rs. 3,00,000/- against both the owner as well as the insurance company.

Petitioner herein submits that the said application was contested by opposite party no. 2, National Insurance Company Limited and in the written statement, the said insurance company submitted that the policy certificate relied by the claimant is fake and as such the insurance company is not liable to pay any compensation.

The owner of the vehicle who is the opposite party no. 1 before the Tribunal did not contest the suit and as such the suit was posted for ex parte hearing. The Tribunal below after hearing the claimant, was pleased to award compensation of Rs. 3,00,000/- in favour of claimant against owner/opposite party no. 1, who is petitioner herein.

Mr. Banerjee, learned counsel appearing for the petitioners submits that the petitioners were not aware about the ex parte order passed by the Tribunal and petitioners came to know on 20.6.2013 from the claimant's lawyer that a money execution case has been filed against petitioners herein.

After receiving such information, petitioners filed an application under Order IX, Rule 13 for setting aside the ex parte order dated 26.5.2008 being Misc. case no. 7 of 2013.

Learned Tribunal below by the order impugned rejected the said Misc. case on the ground that record reveals that on 30.1.2004, the owners/petitioners appeared by filing Vakalatnama and also filed separate application seeking adjournment for filing written statement, so they were well aware of the case but intentionally avoided the proceeding.

He further submits by way of filing a connected application being no. CAN 7161 of 2018 that the Vakalatnama and application which have been shown to have filed by the petitioner herein before the Tribunal on their behalf are forged documents and it was forged by opposite party no. 1 herein and he came to know about the said ex parte judgment through opposite party no. 1's lawyers only on 20th June, 2013. He further submits that he never appointed any advocate or even discussed the matter with any such lawyer at any point of time. Accordingly, they prayed for setting aside the ex parte order of compensation by filing aforesaid Misc. case being no. 7 of 2013.

However, in the said application, petitioners could not disclose regarding filing of forged Vakalatnama since after searching the record, later on they came to know about such forgery. After knowing about the fact, they lodged an application before court below under Section 340 of the Code of Criminal Procedure for an inquiry into the offence committed by

decree-holder/claimant and said application is pending for hearing.

Accordingly, petitioners herein are praying for setting aside the order impugned in order to give them an opportunity to agitate before the Tribunal below that they are victim of forgery, so that Tribunal below can rethink over the issue.

In such view of the matter and in the absence of any opposition raised by the claimant against the contentions raised by the petitioner herein, I find that the petitioner may be given an opportunity to contest the said application afresh in view of alleged subsequent discovery of fraud.

In such view of the matter, the impugned order no. 71 dated 7.1.2017 is hereby set aside. Learned court below is directed to hear the Misc. case no. 7 of 2013 under Order IX rule 13 afresh after giving both the parties to contest, in view of aforesaid alleged discovery of forgery made by the petitioners herein, preferably within one month from the date of communication of the order and also to take appropriate steps without delay, if it has not yet taken, in connection with the petition filed by petitioners herein under Section 340 of the Code of Criminal Procedure.

C.O. 1612 of 2017 is accordingly disposed of. Pending application, if any, also stands disposed of.

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

(Ajoy Kumar Mukherjee, J.)