
(2016) 09 CAL CK 0020
In the Calcutta High Court
Case No : FMA No. 299 of 2007

Kashinath Sadhu

APPELLANT

Vs

M/s. Lila Transport Company

RESPONDENT

Date of Decision : 29-09-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2017) AAC 145 : (2017) 1 ACC 514 : (2017) 1 TAC 652 : (2016) 4 TAC 625

Hon'ble Judges : Mr. Rakesh Tiwari and Mr. Ashis Kumar Chakraborty, JJ.

Bench : Division Bench

Advocate : Mr. Arabinda Kundu, Advocate, for the United India Insurance Company Ltd.; Mr. Uday Shankar Chattenjee, Mr. Santanu Maji, Mr. Snigdha Saha and Mr. Souvik Dutta, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

Ashis Kumar Chakraborty, J. - In this appeal, the appellant has challenged the judgment and order dated March 26, 2006 passed by the learned Judge (Motor Vehicles Claims Tribunal), Fast Track Court, 1st Court, Burdwan in M.A.C. Case No. 82 of 2005. By the impugned order the learned Court below allowed the claim of the petitioner only for Rs. 30,271/- (Rupees Thirty Thousand Two Hundred Seventy One only). The appellant has claimed, in this appeal that he should be awarded an enhanced compensation to Rs. 4 lakhs. In his claim petition under Section 166 of the Motor Vehicles Act, the appellant had claimed that on July 2, 2003, while he was returning home from Katwa by the bus bearing No. W.B.-41/9292 due to a rash and negligent driving by the driver, the said bus capsized on Katwa-Natunhut Road and he himself together with some other passengers of the bus suffered severe injuries. According to the appellant, after the accident he was taken to Mangalkote Primary Health Centre and thereafter, he was shifted to Burdwan Medical College and Hospital. The appellant claimed that in spite of undergoing a long treatment at the said hospitals, he became permanently disabled to the extent of 40% which was duly certified by

the doctors of Burdwan Medical College and Hospital. At the time of the said accident he was 52 years old, from his hardware business, he used to earn a monthly income of Rs. 5,000/- and after meeting with the said accident, due to the permanent disability suffered by him, he cannot carry on his said business properly and he has to regularly visit the doctor for his treatment. Accordingly, the appellant filed the claim petition before the learned Court below claiming compensation for Rs. 4 lakhs against the respondent No. 1, the owner of the said bus and the respondent No. 2 Insurance Company with whom the said bus was insured. In support of his above claim before the learned Court below, the appellant disclosed certain documents including a certificate issued by the doctors of the Burdwan Medical College and Hospital about the disability suffered by him in his body.

2. Although, the opposite party No. 1, that is, the owner of the said bus entered appearance before the learned Court below, but ultimately did not contest the claim case. It was the opposite party No. 2 Insurance Company which filed its written statement and contested the claim of the appellant before the learned Court below. In its written statement, the opposite party No. 2 Insurance Company denied all material allegations made by the appellant in his claim petition. On the allegations made by the appellant in his claim case and the allegations made by the opposite party No. 2 Insurance Company in its written statement the learned Court below framed the following issues:

1. Is the case maintainable in its present form and in law?
2. Was Kashinath Sadhu injured on 2.7.03 at 2.30 P.M. on Katwa-Nutanhat Road, near Bhallyagram bus stand by an accident?
3. Did the accident occur for rash and negligent driving of the Bus No. WB-41/9292 by its driver?
4. Had the driver of the alleged bus involved in the accident valid driving licence at the time of the accident?
5. Was the bus covered with valid insurance policy with the United Insurance Co. Ltd. at the time of the alleged accident?
6. Is the petitioner entitled to get the compensation as claimed for? If so, what would be the quantum of money and who is/are liable to pay the same?

3. The appellant alone adduced evidence before the learned Court below. So far as the first, fourth and fifth issues are concerned, the learned Court below found that the same were not pressed by anybody, there was no material on record to decide the said issues in the negative and as such decided all the said issues in the affirmative. After considering the both oral and documentary evidence adduced by the appellant, the learned Court below also decided the aforementioned second and third issues in the affirmative. With regard to the sixth issue, that is, whether the appellant is entitled to get compensation as claimed for and if so what would be the quantum of money and who is/are liable

to pay the same, the learned Court below found that the appellant had proved that he has spent Rs. 30,000/- for his treatment.

4. In so far as the claim of the appellant that due to the said accident he has suffered 40% disablement in his body, the learned Court below found the handicapped certificate issued by the Burdwan Medical College in favour of the appellant was not proved by the appellant through any of the doctors who had signed the said certificate. Thus, the learned Court below held that since the appellant did not prove the said handicapped certificate he failed to prove that he has suffered permanent disability to the extent of 40% as claimed by him in the claim petition. In any event, the learned Court below noted that in the said certificate dated November 5, 2003 issued by the Medical Board of the Burdwan Medical University, relied upon by the appellant it was mentioned that the appellant had suffered only temporary partial disablement of 40% for three years. After considering the various other decisions of different High Courts of India, the learned Court below held that the said certificate dated November 5, 2003 issued by the Medical Board of the Burdwan Medical College and Hospital is not a public document and since the said certificate was not proved by any of the doctors who has signed the same it was not proved. The appellant also failed to prove that he has suffered permanent disablement of 40% in his body. Accordingly, the Court below held that the appellant is not entitled to get compensation as per the structure formula of the second schedule to the Motor Vehicles Act. However, the Court further held that an amount of Rs. 30,000/- would be the just compensation for the petitioner who had filed the medical vouchers showing the medical expenses of Rs. 271/- is also entitled to get the said amount. Thus, the learned Court below allowed the claim case in part, on contest against the opposite party No. 2 Insurance Company and ex parte against the opposite party No. 1 owner of the offending vehicle and directed the opposite party No. 2 Insurance Company to pay Rs. 30,271/-(Rupees Thirty Thousand Two Hundred Seventy One only) to the appellant by Account Payee cheque within two months from the date of the judgment, failing which the awarded money shall carry interest at the rate of 8% per annum from the date of default till realisation of the full amount. As recorded above, it is the said judgment and order passed by the learned Court below which has been assailed by the appellant in this appeal claiming an award and compensation for Rs. 4 lakhs.

5. Mr. Uday Shankar Chatterjee, learned advocate appearing for the appellant submitted that in the present case the learned Court below fell in error in not considering the said disablement certificate dated November 5, 2003 issued by the Medical Board of the Burdwan Medical College and Hospital produced by the appellant to substantiate his claim that due to the said accident suffered by him, he has suffered 40% permanent disability in his body. He relied on the decision of a learned Single Judge of the Andhra Pradesh High Court in the case of National Insurance Co. Ltd. v. Saheb @ Gadivan Saheb and Anr. reported in 2013 Supreme (A.P.) 1065. According to Mr. Chatterjee the decision of the learned

Court below in not accepting the claim of the petitioner that he has suffered 40% permanent disablement in his body on the ground that the doctors who signed the said medical certificate dated November 5, 2003 issued by the Medical Board of the Burdwan Medical College and Hospital did not adduce evidence to prove the said certificate is vitiated by error of law and, as such, this Court in appeal should set aside the impugned order passed by the Court below and pass an award for Rs. 4 lakhs in favour of the appellant on account of compensation for the 40% permanent disability suffered by the appellant.

6. Per contra, Mr. Aurobinda Kundu, learned advocate representing the respondent No. 2 Insurance Company submitted that it is settled law that a certificate issued by a Medical Board of a hospital in favour of any person is not public document under the Evidence Act, 1872 and in the case on hand when the appellant did not prove the said certificate dated November 5, 2003 issued by the Medical Board of the Burdwan Medical College and Hospital through any one of the doctors who had signed the same, the learned Court below has rightly held that the claim of the appellant that he has suffered permanent disablement of 40% in his body and the said decision suffers from no infirmity calling for any interference of this Court in appeal.

7. We have considered the materials on record and the submission of both Mr. Chatterjee and Mr. Kundu, learned advocates appearing for the respective parties. In the present case, admittedly, the petitioner could not prove the said certificate dated November 5, 2003 issued by the Medical Board, as he did not produce any of the doctors who had signed the said certificate as a witness. It is settled law that a certificate issued by the Medical Board of any Hospital or any doctor is not a public document and the contents of such certificate must be proved by the doctor who has issued the same after being subjected to cross-examination. The test would be, whose case will fail if no evidence is led to prove the document on which the applicant rests his case.

8. In the present case, in his examination-in-chief before the learned Court below, the appellant had stated that he will not produce any of the doctors who had signed the said certificate dated November 5, 2003 to adduce evidence. Thus, the appellant himself could not prove the contents of the said certificate dated November 5, 2003 issued by the Medical Board of the Burdwan Medical College and Hospital and the said certificate was not proved and exhibited. The respondent No. 2 Insurance Company never accepted the correctness of the said medical certificate.

We are accordingly unable to find any infirmity in the decision of the learned Court below in not to have taken the said medical certificate as proved by evidence. Therefore, there is no illegality or infirmity in the order of the learned Court below impugned before us in the appeal.

9. In the case of Saheb @ Gadivan Saheb (supra) the claimant had proved that after meeting with the accident he suffered severe injury and his right leg above

knee was amputated. The Insurance Company neither challenged the fact that the claimant had met with the accident and lost his right leg above knee by traumatic amputation, nor did the Insurance Company challenge the authenticity of the certificate issued by the Medical Board (Exbt. -A5) to the effect that the claimant suffered 80% permanent disability in that case. Further in the said case the claimant had proved another medical certificate issued by another doctor to the effect that he had suffered 65% permanent disability by producing the said doctor as witness before the tribunal. For all these reasons, the said decision of the learned Single Judge of the Andhra Pradesh High Court is clearly distinguishable from the facts of the present case.

10. In any event, even it is accepted for the sake of argument that the appellant could rely upon the said medical certificate issued by the Medical Board, even then in the said certificate dated November 05, 2003 it is expressly mentioned that the appellant has 40% temporary disability for three years. Thus, by no means it can be held that the appellant had proved to have suffered 40% permanent disablement.

11. For all the foregoing reasons, we do not find any infirmity in the impugned decision of the learned Court below.

Accordingly, the appeal, being FMA No. 299 of 2007 stands dismissed.

However, there shall be no order as to costs.

Urgent Certified Copy to be issued upon appropriate application(s) being made in that regard.