

(1894) 02 CAL CK 0014
In the Calcutta High Court

Thompson

APPELLANT

Vs

Calcutta Tramways Company

RESPONDENT

Date of Decision : 26-02-1894

Acts Referred:

Citation : (1894) ILR (Cal) 523

Hon'ble Judges : Sale, J

Bench : Single Bench

Judgement

Sale, J.—(After stating the facts and stating that the conclusion to which he had come rendered it unnecessary to direct the issue of notice to the defendant Company to show cause against the application), continued:

2. It is suggested that as the finding of the Appellate Court did not in terms coincide with the finding of the Original Court as to contributory negligence on the part of the plaintiff, and as the value of the suit is alleged to be over Rs. 10,000, the plaintiff is entitled to obtain a certificate on the authority of the case of In the matter of the petition of Ashghar Reza ILR Cal. 287.

3. In that case the Appellate Court differed from the lower Court as to the effect of an ikrarnama, and decided the case upon an issue not raised in the lower Court. There were also points of law involved in that case.

4. In the present case the issue of fact was the same in both Courts. The findings of fact in both Courts are also in effect the same, namely, that the plaintiff had failed to establish the case alleged by him, which, if established, would have rendered the defendant Company civilly liable. The Appellate Court concurred in the result, and the decree of the Original Court was affirmed.

5. Under these circumstances, and having regard to the fact that there is, as between the parties, no question of law involved in the case, it appears to me that I am justified in disposing of this application without putting the parties to unnecessary costs by directing the issue of a notice to the defendant Company.

6. The applicant has also asked for leave to appeal as a pauper. That raises an important question as to whether this Court has power to grant leave to appeal to Her Majesty in Council in forma pauperis, and to dispense with the usual security for the costs of the respondent required by Section 602, but it is unnecessary to consider that question in the view I have taken as regards the substantive part of this application. It is also to be observed that the petition itself is defective in form, inasmuch as it does not, as required by Section 600 of the Code, conclude with the usual prayer for a certificate that the case fulfils the requirements of Section 596*. That, too, is a matter which it is not necessary to deal with now.

* Value of subject-matter.

[Section 596 : In each of the oases mentioned in Clauses (a) and (b) of Section 595, the amount or value of the subject-matter of the suit in the Court of First Instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards, or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value, and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.]