
Pramod Kumar Singh Vs Mithilesh Kumar Singh

Miscellaneous Appeal No. 204 Of 2015

Court: Patna High Court

Date of Decision: Jan. 17, 2023

Acts Referred:

Indian Penal Code, 1860 " Section 279, 304B, 338

Hon'ble Judges: Rajeev Ranjan Prasad, J

Bench: Single Bench

Advocate: Alok Kumar @ Alok Kr Shahi, Sanjay Singh

Judgement

Heard learned counsel for the appellant and learned counsel for the respondent no. 2(a) and 2(b) who have been arrayed as respondent no. 2/Insurer.

This appeal has been preferred for setting aside the order dated 31.01.2015 passed by learned Additional District Judge " VIII " cum " ,

M.A.C.T., Hajipur, Vaishali (hereinafter referred to as the "Tribunal") in Claim Case No. 57/2005 whereby and whereunder the learned Tribunal

has been pleased to dismiss the claim application preferred by the present appellant.

The present claim was filed claiming a sum of Rs. 3,68,416/- as compensation on account of the permanent disability caused to the

applicant " appellant in the accident which took place on 14.03.2005 at 7:15 A.M.

Learned counsel for the appellant submits that this appellant was driving the truck bearing HR38K 5124 and while moving towards Gauhati the left

tyre of the truck burst which led to an accident in which the appellant and two others got injured. One of the injured died in course of treatment in the

hospital. So far as this appellant is concerned, he claims that he was admitted in one Paramount Hospital from where he was shifted to Bhudha

Hospital and Research Centre for better treatment. He claimed that a sum of Rs. 1,66,258/- was paid to the nursing home and a sum of Rs. 41,038/-

was incurred on purchase of medicines. He further claimed a sum of Rs. 21,000/- paid to the physiotherapist. Learned tribunal has recorded in it " ,

order that these bills were brought on the record of the claim case.

Learned counsel further submits that in respect of the said accident one Samuktala P.S. Case No. 27/2005 dated 15.03.2005 was registered for the

offences alleged under Sections 279, 338 and 304B of the Indian Penal Code. After investigation even as the investigating agency found that the

accident had taken place due to bursting of the tyre of the truck while moving on NH-31, the investigating agency submitted a charge-sheet against

the petitioner alleging that he was driving the vehicle speedily. Learned counsel submits that the allegation that the driver was running the vehicle

speedily was completely vague and a mere statement to that effect in the charge-sheet would not take away the claim of the appellant.

Learned counsel further submits that the learned Tribunal has dismissed the claim petition despite the fact that the claimant had produced himself and

four other witnesses in support of his claim. He had also produced the number of documentary evidences which have been mentioned in paragraph

Ã¢â¬Å of the impugned order.

It is submitted that as against the evidence of the claimant/appellant the insurance company or the owner of the vehicle had not produced any oral or

documentary evidence.

Learned counsel has assailed the impugned order on various grounds. One of the grounds taken by learned counsel for the appellant is that learned

Tribunal has completely erred in appreciating the materials available on the record. The Tribunal has recorded that from the materials available on the

record it is not clear as to whether the disability has been caused in the said accident. This finding of the learned Tribunal has been recorded only

because no specialized Medical Practitioner was examined. It is submitted that the Tribunal had no reason to disbelieve the oral as well as the

documentary evidences which were available on the record particularly when the evidences were clinching and the Insurance Company had failed to

controvert those evidences.

Learned counsel further submits that the Tribunal has further failed to appreciate that no doubt the chargesheet has been filed against the petitioner

but the cause of accident has been duly shown as the bursting of the tire. The investigating agency has vaguely stated that the driver of the vehicle

was driving the vehicle speedily. It is a vague allegation and would not affect that claim of the petitioner.

Learned counsel has further assailed the finding of the learned Tribunal that the driver and the assistant driver who were on the Truck were not

insured under the policy. Learned counsel submits that it was not the case of the Insurance Company. He has drawn the attention of this Court

towards the evidence of the applicant-appellant. In course of his Examination-in-Chief, the appellant has stated inter alia that he had suffered

permanent disability because of the injury suffered by him on his right leg. In course of his cross-examination, the Insurance Company has not

questioned the statement of the appellant that he suffered the disability because of the accident. The Insurance Company never took a plea that the

policy did not cover the risk of driver and the assistant driver.

Learned counsel has placed before this Court a copy of the insurance policy and submits that it was a commercial vehicle package policy in which the

premium was collected by the Insurance Company as OD Premium as well as TP Premium. It is his submission that when the Insurance Company

had not denied the existence of the policy and coverage of risk, it was wrong on the part of the Tribunal to record a finding that the driver and the

assistant driver on the vehicle were not covered under the policy.

Mr. Sanjay Singh, learned counsel for the Insurance Company has though opposed the appeal but at the same time learned counsel does not dispute

the submission that the learned Tribunal has recorded the findings as regards the policy document without there being any evidence to that effect led

on behalf of the Insurance Company.

Having heard learned counsel for the appellant as well as the Insurance Company and upon perusal of the impugned order, this Court is of the

considered opinion that the learned Tribunal has failed to appreciate the evidences available on the record as regards the accident, cause of accident

and the sufferance of disability on the part of the appellant. This Court has gone through the evidences of the claimant's witnesses and that of the

claimant which have been made available in course of hearing. This Court does not find any case of the Insurance Company in the cross-examination

that the appellant had not suffered injury in the said accident. This being the position, learned Tribunal could not have come to a conclusion that the

applicant/appellant had not proved that he had suffered disability to the extent of 20% in the said accident. The Tribunal, in the opinion of this Court, is

not justified in taking an adverse view only because a specialized doctor was not examined to say so. The Tribunal has further erred in recording a

finding that the insurance documents does not show coverage of risk on the life of the driver and the assistant driver. As stated above, the insurance

documents were not proved before the Tribunal and there was no such plea of the Insurance Company.

For the reasons stated hereinabove, this Court sets-aside the impugned order and remit the matter to the Tribunal to consider the claim application

afresh on the basis of the materials available on the record after giving an opportunity to both the sides to lead any other or further evidence in the

matter. Let the claim case be disposed of within a period of six months from the date of receipt/ communication of this order.