

## Sudhir Bhuiya Vs National Insurance Co. Ltd. and Another

**Court:** Calcutta High Court

**Date of Decision:** Aug. 26, 2004

**Acts Referred:** Evidence Act, 1872 â€” Section 74  
Motor Vehicles Act, 1988 â€” Section 166

**Citation:** (2005) 4 ACC 432 : (2005) ACJ 509

**Hon'ble Judges:** Bhaskar Bhattacharya, J

**Bench:** Single Bench

**Advocate:** Krishanu Banik, for the Appellant;

**Final Decision:** Dismissed

### Judgement

Bhaskar Bhattacharya, J.

This application under Article 227 of the Constitution of India is at the instance of an applicant u/s 166 of the

Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") and is directed against the Order No. 26 dated 8.1.2004 passed by the learned

Judge, Motor Accidents Claims Tribunal, 2nd Court, Burdwan in M.A.C. Case No. 65/376 of 2002 thereby rejecting an application filed by the

petitioner for marking three different documents as exhibits without calling any witness to prove those documents.

2. In the said proceedings under the Act, the petitioner filed an application on 24.5.2004 praying for admitting a "disablement certificate" issued by

the Department of Orthopaedic, R.G. Kar Medical College and Hospital, Calcutta, a "discharge certificate" issued by Durgapur Steel Plant

Hospital and a "medical bill" issued by Durgapur Steel Authority of India without calling any witness. According to the petitioner, those documents

were public documents and as such, those could be marked as exhibits without proving those documents in accordance with Evidence Act.

3. The learned Tribunal by the order impugned has rejected such application.

4. Being dissatisfied, the petitioner has come up with the present application under Article 227 of the Constitution of India, Mr. Banik, the learned

advocate appearing on behalf of the petitioner, has made twofold submission before this court.

5. First, he has contended that those documents are public documents within the meaning of Evidence Act and as such those can be admitted in

evidence without calling any witness for the purpose of proving those documents. Secondly, Mr. Banik contends that in proceedings under the Act,

the provisions of Evidence Act are not strictly applicable and as such, the learned Tribunal below ought not to have rejected the prayer and should

have marked those documents as exhibits. Mr. Banik submits that those documents were issued by respective Government authorities and as such,

there was no reason to disbelieve the contents thereof. He, thus, prays for setting aside the order impugned.

6. Therefore, the first point that arises for consideration in this application is, whether those three documents mentioned above are public

documents within the meaning of Evidence Act.

7. According to Section 74 of Evidence Act, the following documents are public documents:

(1) documents forming the acts, or records of the acts-

(i) of the sovereign authority;

(ii) of official bodies and Tribunals; and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;

(2) public records kept in any State of private documents.

8. It appears that out of those three documents, "discharge certificate" issued by Durgapur Steel Plant Hospital and the "medical bill" given by

Durgapur Steel Authority of India are neither documents forming the acts or record of the acts of the sovereign authority or of official bodies and

Tribunals or of any public officers, legislative, judicial or executive of any part of India or Commonwealth or foreign countries, nor are those

documents kept in the State as record of private documents. Therefore, those two documents are not public documents within the meaning of

Section 74 of the Evidence Act and the petitioner cannot get the benefit of that section.

9. So far as the disablement certificate purportedly issued by the medical board of R.G. Kar Government Hospital is concerned, the petitioner did

not pray for the production of the certified copy of such document but wanted to mark the original as exhibit without proving its genuineness.

According to the petitioner the court should not only accept the said document as a genuine one but also should rely upon its contents without

examining the doctors who allegedly issued such certificate.

10. According to Section 77 of the Evidence Act, if any document is a public document, in such a case, by production of certified copy, the

contents of the document or part of the document can be proved. In the case before us, the petitioner does not want to prove those documents by

production of certified copy, but he wants that those should be marked as exhibits by production of the original documents without calling the

author of those documents or without proving that those were really issued by the authority mentioned therein.

11. In my view, if the petitioner wants to rely upon any original disablement certificate issued by doctors of any Government hospital, such fact

must be proved by competent person showing that the same was really issued by such authority. As regards the contents of the disablement

certificate, the same must be proved by the author of the document who had certified that petitioner had suffered disablement.

12. It is now settled position of law that by merely proving the handwriting of the person who has written a document, the veracity of the statement

made in the said document cannot be proved. Such person must depose before court in support of the contents and will face cross-examination of

the opponent; otherwise such document can be merely taken into consideration for the purpose of showing that such a certificate was issued, once

its genuineness is proved. But whether the contents of the certificate are correct or not, such facts cannot go into the evidence unless the author of

the document deposes before court and faces cross-examination. The contents of a document without examining the author are worst pieces of

hearsay evidence. [See June alias Arjun Mandy v. State, 90 CWN 838 at 847 and Sris Chandra Nandy Vs. Sm. Annapurna Ray,

13. As regards the two documents issued by Durgapur Steel Authority, those must be proved by calling any competent employee of the said

authority as witness.

14. I, thus, find that those documents should be marked as exhibits only after proving the fact that those documents were really issued by those

authorities; even if those documents are proved by showing that those were issued by those authorities, unless the concerned doctor, who gave the

opinion about the disablement of the petitioner deposes before court and offers himself for cross-examination, the veracity of the statements

contained therein cannot be taken into consideration.

15. As regards the other point raised by Mr. Banik, I find that same is equally devoid of any substance. It is true that in motor vehicle proceedings,

Evidence Act may not be strictly applicable, but for the purpose of ascertaining the fact whether a person has really suffered disablement, such fact

must be proved by following the principles of natural justice. If the petitioner really wants support from the opinion of any doctor or board of

doctors, the insurance company and the owner of the vehicle against whom the said opinion will be used should be given opportunity to cross-

examine those persons for the purpose of ascertaining the truth of their opinion contained in the certificate; it is preposterous to suggest that by

mere producing a certificate showing that a person had become disable, he can force the insurance company or the owner of the vehicle to pay

compensation though the genuineness of the document is not proved and they are not in a position to cross-examine the person who has allegedly

given such opinion.

16. I, thus, find no force in either of the contentions raised by Mr. Banik. I now propose to deal with the decisions cited by him.

Mr. Banik has placed reliance on the following decisions:

- (1) United India Insurance Co. Ltd. Vs. Mrs. Patricia Jean Mahajan and others,
- (2) Rajasthan State Road Trans. Corpn. Vs. Nand Kishore and Others,
- (3) Raghubir Singh Vs. Sarita Sharma and Others,
- (4) Managing Director, North East Karnataka Road Trans. Corpn. Vs. T. Prabhakar and Others,
- (5) Union of India (UOI) and Another Vs. Mrs. Saraswati Debnath and Others,
- (6) New India Assurance Co. Ltd Vs. Saloni Dargan and others,
- (7) Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others,
- (8) N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal 1980 ACJ 435 (SC).
- (9) Parmanand Katara v. Union of India 1989 ACJ 1000 (SC).
- (10) United India Insurance Co. Ltd. v. Sipra Bahima, 1997 (2) CHN 585.
- (11) Rajasthan State Road Transport Corporation and Others Vs. Devilal and Others,

Of the aforesaid decisions, there are three decisions of the Supreme Court and I will deal with those at the very outset.

17. In the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, the Supreme Court

pointed out that the strict rules of the Evidence Act and standard of proof envisaged therein do not apply to domestic Tribunals. According to the

Supreme Court, it is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable facts though not

strictly proved in accordance with the provisions of the Evidence Act.

18. In the case of N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal 1980 ACJ 435 (SC), the Apex Court while dealing with a case under Motor

Vehicles Act, observed that the court should not succumb to niceties, technicalities and mystic maybes.

19. In the case of Parmanand Katara v. Union of India 1989 ACJ 1000 (SC), the Supreme Court while dealing with a public interest litigation

observed that the courts should not summon a medical professional to give evidence unless his evidence is necessary and even if he is summoned,

attempt should be made to see that he is not made to wait and waste time unnecessarily. Thus, the necessity of giving evidence by a doctor has not

been done away with by the said decision.

20. In the other decisions of different High Courts, those decisions of the Supreme Court have been relied upon and the courts have held that the

technicalities prescribed in the Evidence Act need not be strictly followed. However, except in the case of Managing Director, North East

Karnataka Road Trans. Corpn. Vs. T. Prabhakar and Others, in no other case, the question involved herein, viz., whether the contents of a

medical certificate without examining the author thereof can be proved, was the subject-matter of dispute.

21. In the aforesaid case of Karnataka High Court, it has been laid down as a proposition of law that in respect of a certificate issued by a doctor

certifying wounds of the claimant, if such certificate was marked as exhibit with the consent of the parties, subsequently, the owner of the vehicle

cannot raise objection as regards non-examination of the doctor. It is now a settled law that if a document is marked exhibit on consent without

reservation, the contents are not only evidence but are taken as admitted the result being, the contents cannot be challenged either by way of

cross-examination or otherwise. However, in respect of the documents which are marked exhibit on formal proof being dispensed with, the

contents are evidence although the party admitting does not accept the truth of the contents and is free to challenge the contents by cross-

examination or otherwise. [See Lionel Edwards Ltd. Vs. State of West Bengal, Therefore, the said Karnataka decision is of no avail to the

petitioner.

22. In the case of United India Insurance Co. Ltd. v. Sipra Bahima 1997 (2) CHN 585, a Division Bench of this court in an appeal against the

award passed by the Tribunal was considering a situation where one of the members of a medical board proved the disability certificate and at the

same time, the said document was marked as exhibit without any objection. Under such circumstances, the Division Bench did not permit the

insurance company to dispute the question of genuineness of the document. The said decision is thus of no assistance to the petitioner.

23. This court is quite alive to the position of law that in proceedings under the Motor Vehicles Act the technicalities of the Evidence Act will not

stand in the way of a Tribunal in giving appropriate relief to a litigant as pointed out by the Apex Court and while disposing of such proceedings the

Tribunal should be guided by the basic principles of natural justice. The principle of exclusion of hearsay evidence as provided in the Evidence Act

is, however, not a technical rule but based on the principle that the evidence must be direct and that the person whose version will form part of

evidence must face cross-examination of the party against whom such evidence will be used. I have already indicated that if the Tribunal decides to

rely upon the opinion of any person for the purpose of awarding any compensation, the person who will be forced to pay the amount, must get an

opportunity to cross-examine the author of the opinion. Thus, the Tribunal had rightly refused to mark the disablement certificate unless the same

was proved in accordance with the provisions of the Evidence Act. The other two documents must also be proved by calling Durgapur Steel

Authority as witness unless those documents are admitted by the respondents.

24. I, thus, find no reason to entertain this application and the same is accordingly dismissed.