

MACC No.07 of 2017 (07 of 2017)

07.02.23

Today is fixed for hearing of the petition dated 14.09.22 as filed by the petitioner.

Ld. Lawyer for the petitioner and ld. Lawyer for OP no.1 and ld. Lawyer for OP no.2 both are present.

The petition as filed by the petitioner dated 14.09.22 is taken up for hearing.

Ld. Lawyer for the petitioner submitted that summons were sent on a number of occasions to the concerned doctors of the Medical Board which issued to the disability certificate to the claimant and also issued summons to the doctors of Tata Main Hospital where the victim was treated, but they did not appear and hence the petitioner is praying for exhibiting the discharge certificate of Tata Main Hospital and the disability certificate issued by DM Sadar Hospital, Purulia.

Ld. Lawyer for both the opposite parties raised objection vehemently and submitted that disability certificate is not a public document at all and the document of Tata Main Hospital is also document of a private hospital and cannot be exhibited in this way.

Heard both sides. Perused the petition, the materials on record and the decision submitted by the ld. Lawyers for the petitioner and the opposite parties.

Considered.

It appears from the disability certificate that it was issued by a Govt. hospital and has signature of 3 doctors including the Superintendent and the discharge certificate of Tata Main Hospital does not bear any seal at all of the said hospital.

The document of a private hospital is not at all a public document and the disability certificate was issued after assessing the disability by the members of the board regarding which the opposite parties require to cross examine.

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In this regard ld. Lawyers for the petitioner and both the opposite parties have submitted some decisions.

In the decision submitted by ld. Lawyer for the insurance co. reported in **2005 (1) TAC 66 (Cal)** it has been observed that – “24. This Court is quite alive to the position of law that in proceedings under 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 exclusions 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 opportunity to cross-examine the author of the opinion. Thus, the Tribunal rightly refused to mark the disablement certificate unless the same was proved in accordance with the provisions of the Evidence Act.”

In the decision submitted by the OP no.1 (owner) decided by Hon’ble Apex Court in **SLP (C no.8050 of 2007)** it has been observed that – “.....9. The certificate in question in this case was obtained after two years. It is not known as to whether the Civil Surgeon of the hospital treated the appellant. On what basis, such a certificate was issued two years after the accident took place is not known. The author of the said certificate had not been examined. Unless the author of the certificate examined himself, it was not admissible in evidence.”

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Ld. Lawyer for the claimant has also submitted some decisions of Hon'ble Calcutta High Court in the decision decided by the Hon'ble Calcutta High Court in **FMA 3288 of 2013** that ".....Keeping an eye to the observation of the Hon'ble Apex Court in several decisions discussed herein above, I find that disability certificate which was proved by the employee of the hospital (PW3) can not be discredited in terms of cross-examination. Disability certificate shows the disability was assessed by the doctor of the Board of Contai S.D. Hospital and their expertise and experience can not be doubted in absence of any rebuttable evidence on record. That apart, prolong treatment of the claimant by several doctors in several hospitals further buttressed the acceptability of the disability to the extent of 60%. Therefore, I find no ground to interfere with the observation of the Ld. Tribunal on the issue of disability."

So it appears from the decision that the Hon'ble Court considered the disability certificate which was proved by employee of the hospital.

Another decision submitted by the ld. Lawyer for the claimant of Hon'ble Apex Court in **Civil Appeal No.8179 of 2022** wherein it has been observed that - ".....19. It is well settled that Motor Vehicles Act, 1988 is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has been established, the Tribunal's role would be to award just and fair compensation. As held by this Court in Sunita (Supra) and Kusum Lata (Supra), strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases, i.e., to say, "the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."

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It appears from the Hon'ble Apex Court's observation that the documents must be proved but by preponderance of probability and not by strict standard of proof beyond all reasonable doubt which is followed in criminal cases.

It appears from the decision of Hon'ble Calcutta High Court that disability certificate was proved by the employee of the concerned hospital. The discharge certificate is of a private hospital and as there is no seal etc the genuinity of the document has to be proved by calling a witness who prepare such documents in the said hospital.

The documents are not public documents and must be proved but without observing strict standard of proof.

The prayer of the claimant in the petition dated 14.09.22 for exhibiting the documents as public documents is rejected with the above observation.

The petitioner is directed to take necessary step accordingly.

To **13.04.23** for evidence.

Dictated and Corrected by me

Judge, MAC Tribunal
1st Court, Purulia.

Judge, MAC Tribunal
1st Court, Purulia.