

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10607 OF 2015**

The Oriental Insurance Co. Ltd.

..Petitioner

Vs.

Smt. Shobha Ganesh Hegde & Ors

..Respondents

Mr. D. S. Joshi for the Petitioner

Mr. T. J. Mendon for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 16th JANUARY, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 16-9-2015 passed by the Learned Member of the Maharashtra Accident Claims Tribunal (for short MACT), by which order the Petitioner was directed to deposit the disputed interest within 4 weeks from the date of the order.

2 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Claim Petition filed by the Respondent No.1 herein being MACP No.961 of 1998 came to be partly allowed by the Learned Member of the MACT and the directions in the operative part of the order dated 19-3-2013 came to be issued which for the sake of ready reference are produced herein under:

1. Application is hereby partly allowed.

2. The opposite party and the insurance company shall jointly and severally pay compensation of

Rs.9,80,000/- (Rupees Nine Lacs Eighty Thousand only) inclusive of NFL amount to the applicant within the period of four weeks from today, failing which the amount shall carry interest @ 7.5 % per annum, from the date of this application till realization of remaining amount to applicant.

3. It is directed that the opposite party and insurer shall issue A/c payee cheque in the name of applicant Shobha Ganesh Hegde.

4. It is further directed that the cheque shall be deposited in this Tribunal and account officer shall hand over the cheque to the applicant on obtaining receipt thereof and on verification of court fees.

5. Award be drawn up accordingly.

Hence the Claim Petition was allowed for the sum of Rs.9,80,000/- inclusive of no fault liability amount which was to be paid to the Applicant within 4 weeks from date of the order failing which the amount is to carry interest @ 7.5 p.a. from the date of the application till realisation of the remaining amount to the Applicant. The Petitioner herein applied for a certified copy of the said judgment and order dated 19-3-2013 on 22-3-2013. The certified copy it seems was ready on 21-6-2013. The Petitioner got the same collected on 25-6-2013 and immediately thereafter on 22-7-2013 deposited the amount as directed by the said judgment and order dated 19-3-2013.

3 It seems that in the interregnum the Respondent No.1 had filed

application for Execution being No.103 of 2014 in the said Claim Petition. In the said execution proceedings the Respondent No.1 filed Exhibit 5 for issuance of warrant of attachment against the Petitioner herein for non deposit of the principal amount which the Petitioner was liable to pay in terms of clause (2) of the operative part of the said order dated 19-3-2013 within a period of 4 weeks from date of the said order. In view of the said application a show cause notice came to be issued to the Petitioner. The Petitioner thereafter appeared and filed its reply to the execution application as also to Exhibit-5. It was the case of the Petitioner that the application filed by the Applicant i.e. the Respondent No.1 herein is misconceived and misconstrued and is also an abuse of process of the court and hence deserved to be dismissed.

4 The Learned Member of the MACT considered the said application Exhibit 5 and on the ground that once the judgment is pronounced in the open court in the presence of the Counsel for the Insurance Company, it amounts to sufficient notice of the liability imposed upon the insurer and the opposite party. Merely because the certified copy was not delivered to the insurer is not an excuse to evade its liability because the judgment will operate from the date of its pronouncement. As indicated above, it is the said order dated 16-9-2015 passed by the Learned Member of the MACT which is taken exception to by way of the above Petition.

5 The Learned Counsel for the parties would make submissions against and for interest to be granted from the date of the application i.e. from 1998 till 22-7-2013 when the principal amount was deposited. Whilst it is the contention of the Learned Counsel Mr Joshi appearing for the Petitioner that the Petitioner is a public sector insurance company and it could act only after it receives the certified copy and in the instant case the certified copy having being received on 25-6-2013, the deposit made on 22-7-2013 was within the period stipulated in the said order dated 19-3-2013.

6 Per contra, the Learned Counsel for the Respondent would contend that the Petitioner should have acted upon the said order which was pronounced in the open court and could not have waited for the certified copy. The Learned Counsel would contend that the period stipulated in the order dated 19-3-2013 is from the date of the order and not from the receipt of the certified copy.

7 Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, the MACP has been partly allowed by order dated 19-3-2013 and the amount awarded is in the sum of Rs.9,80,000/- which finds a mention in clause (2) of the said order. The stipulation as regards within what time the amount is required to be

deposited is also mentioned in the said clause (2). As indicated above the Learned Member of the MACT has found fault with the Petitioner on the ground that since the judgment and order was pronounced in the open court in the presence of the counsel for the Petitioner, the judgment and order should have been complied with and could not have been delayed on the account of the fact that the certified copy was not available. However, the fact that the Petitioner is a public sector insurance company, cannot be lost sight of. The Petitioner therefore can act upon an order or judgment only after it receives a certified copy of the same and cannot go by the instructions of its counsel or its officer who was present in the court when the judgment and order was pronounced. In the instant case, as indicated above, the certified copy though ready on 21-6-2013 was taken delivery of on 25-6-2013 i.e. delay of about 4 days. In so far as the application for certified copy is also concerned, the same was made after a period of 3 days. No fault can be found with the Petitioner on the ground that it can only act after it received a certified copy, considering the fact that it is a public sector undertaking and there has to be a judgment and order of the court in black and white before it, for being acted upon.

8 In my view, therefore, the award of interest from the date of application till payment i.e. 22-7-2013 is not warranted. The award of interest is also harsh considering the fact that no such interest was awarded by the

main order i.e. order dated 19-3-2013 and in fact no Appeal was filed by the Respondent No.1 i.e. Claimants challenging the denial of interest to her. The impugned order dated 16-9-2015 is accordingly quashed and set aside.

9 However, since there is some delay on the part of the Petitioner i.e. the delay in filing the application for certified copy as also the delay in collecting the certified copy which can be said to be cumulatively of 7 days, it would be just and proper to impose some costs on the Petitioner. In the facts and circumstances of the case, the Petitioner to pay costs of Rs.10,000/- to the Respondent No.1 within 4 weeks from date. The Petitioner can seek refund of the amount of Rs.2,40,000/- deposited in the Tribunal on producing copy of the instant order.

10 The Petition is allowed to the aforesaid extent and is accordingly disposed of.

[R.M.SAVANT, J]