10.12.2020
Ct. 13
Sl. 102
Sp.

F.M.A.T. No. 461 of 2017
With
C.A.N. 1 of 2020
(Old No. CAN 4231 of 2017)
with
CAN 2 of 2020
(Old No. CAN 4230 of 2017)

National Insurance Company Limited
-Versus-
Smt. Kalpana Mudi @ Kora & Ors.

Mr. Amit Ranjan Roy
...for the claimant/respondent

Mr. Rajesh Singh
...for the appellant/insurance company

<u>Re: CAN 4231 of 2017</u>

CAN 4231 of 2018 has been filed seeking condonation of delay in filing FMAT 461 of 2017.

Having heard the learned advocate appearing on behalf of the appellant as also considering the statements made in the application, I am of the opinion that delay in filing the appeal has been explained. The delay is condoned.

CAN 4231 of 2017 is allowed.

By consent of parties, the appeal is treated as on day's list and is taken up for hearing.

The Department is directed to issue FMA number immediately.

The insurance company has challenged the order of the Judge, Motor Accident Claim Tribunal, Fourth Court, Asansol dated December 23, 2016 passed in MACC No. 2 of 2014. A cross-objection being COT 11 of 2018 has also been filed by the claimant respondent on inter alia the grounds that the claim for future prospects has not been addressed by the Court below.

The brief facts of the case are that on December 9, 2012 at about 11 o' clock at night the victim Ranjit Modi @ Kora was returning from Nirsha to his house at Tapatar in Jharkhand through NH-2, riding a motorcycle bearing No. JH-10T/8271. When he reached Debiyana Gate under P.S. Nirsha, Dhanbad, an Indica car bearing no. WB02M/8775 is stated to have rashly and negligently moved in with high speed and dashed the victim's motorcycle from behind. The victim died at a private nursing home in Kolkata after initial treatment at Jharkhand. Nirsha Police Station Case No. 339 of 2012 was started on 14.12.2012 against the driver of the offending vehicle under Section 279/304A of the IPC.

The victim was an employee of M/s Eastern Coal Fields Limited near Asansol. The offending vehicle was insured by the Appellant Insurance Company. The driver of the offending vehicle, Shyam Rajak and the appellant Insurance Company were impleaded as defendant nos. 1 and 2. A total sum of

Rs.50,00,000/- was claimed.

The court below received documentary evidence, to include the insurance policy, the complaint, the FIR and the charge sheet. Issues were framed. Five witnesses deposed on behalf of the claimants in the proceeding.

One Bablu Karmakar, PW 5, claimed to be an eye witness. He deposed that he was a labourer whose duty was 8 a.m. to 4 p.m. He clearly mentioned the make of the offending vehicle and also the registration number. He also gave the registration number of the motor cycle on which the victim was riding. He named two other persons, namely, Kalyan Bauri and Sikander Bauri who saw the accident occurred at about 11 p.m. They did not depose in the proceedings. PW-5 could not produce his voter card, ration card or PAN card. He stated that the complaint with the police was lodged in his presence.

The complaint was lodged 5 days after the actual incident. The same is by itself not be fatal or illegal. What is however interesting is that the complaint referred to an unknown vehicle and the FIR dated 14.12.2012 also mentioned an unknown vehicle. The court below failed to appreciate the discrepancy between the complaint, the FIR and the evidence of PW 5. There is also apparent inconsistency as to what PW 5, the sole eye witness was doing on national highway at 11 p.m. at night when his duty are admittedly 8 am to 4 pm. It is also curious as to why the complaint or the FIR did not record the registration number of the offending vehicle and as to how at 11 p.m. at night PW 5 was able to identify the registration number of the offending vehicle. Surprisingly, the Insurance Company chose not to cross examine the PW 5 of the above issues.

However, it is well settled that an uncontroverted and unchallenged evidence by itself may not always conclusively prove a fact or a series of facts. Doubts in such evidence can only be addressed by corroborative evidence. Admittedly, there is no further corroboration of the evidence of PW 5. There is however a charge sheet filed by the prosecution in the criminal case against the driver/owner of the vehicle, that has come on record, confirming the oral statements of PW 5. The same cannot be used as a corroboration.

This apart, the Insurance Company could easily have summoned the driver/owner of the offending vehicle who admittedly have been enlarged on bail after the charge sheet was filed in the criminal court. The Insurance Company has been curiously and notoriously negligent in failing to take such steps.

The fate of a criminal proceedings has not been informed to this Court.

In the light of the aforesaid contradictions and the gross and pathetic negligence on the part of the Insurance Company and its agents and the nature of evidence in the court below serious doubts exist as regards the claimants' case.

Appellate Courts, in an adversarial proceedings, generally do not interfere when uncontroverted evidence is before a Lower Court. However, the discrepancies narrated herein above are glaring and shock the conscious of this Court. This Court therefore is of the view that the matter should be remanded back to the court below.

The court below shall issue summons on the driver/owner of the offending vehicle namely, TATA Indica Car bearing no. WB02M/8775 and obtain all evidence that would be relevant to the claim petition. The Insurance Company and the claimants shall be entitled to produce any other relevant evidence including the criminal proceedings in the claims tribunal below.

The impugned judgment is set aside and the matter remanded back to the court below for consideration afresh on the basis, inter alia, of the observations made herein above.

In view of the omissions and commissions of the Insurance company, its officials and agents costs assessed at Rs.45,000/- shall be paid to the claimants/Respondents. The payment of costs shall be condition precedent for the aforesaid order to take effect.

The cost shall be paid proportionately to the each claimant. The cost shall be paid into the bank accounts of the claimants, particulars whereof shall be supplied by the claimants/respondents to the counsel for the appellant. The Insurance Company is directed to make payment of such cost within 45 days from the date of receiving the bank particulars of the claimants.

It is clarified that in default of payment of costs within a month from date, the judgement delivered by the court below shall revive and be put into execution by the claimant/respondent.

If the costs as directed herein above, are paid the tribunal shall endeavour to dispose of the matter within a period of four months from the date of such payment.

If the judgment is put into execution in the circumstances indicated herein above, the COT No. 11 of 2018 shall automatically be revived.

The Chairman and Managing Director of the

National Insurance Company are directed to cause an enquiry into the facts and circumstances which led to the omissions on the part of its agents and officials in defending the claim of the respondent in the Court below and take such suitable remedial measures as may be deemed necessary. The entire sums of money deposited by the Insurance Company in aid of this appeal with the Registrar General of this Court, without interest, shall be refunded back to its authorised officer who shall be named in the application that will be filed before the Registrar General for the aforesaid purpose. The interest accrued on the sums deposited by the Insurance Company shall be applied by the Registrar General towards the building expenses of the High Court premises.

Urgent photostat certified copy of this order, if applied for, be given to the parties.

(Rajasekhar Mantha, J.)