13.12.2021
Item Nos.15 & 16
Ct. No.7
PA
(disposed of)

F.M.A.T. 813 of 2013

With

IA NO: CAN/1/2013 (Old No.: CAN/6902/2013)
CAN/2/2013 (Old No.: CAN 6903/2013)
CAN/3/2014 (Old No.: CAN/5617/2014)

The Oriental Insurance Co. Ltd.
Vs.
Ahmed Hossain & Ors.

With

C.O.T. No. 113 of 2018
Ahmed Hossain & Anr.
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Sanjay Paul
...For the Appellant/Insurance Company

Mr. Ashique Mondal
...For the Respondents/ Claimants

IA NO: CAN/1/2013
(Old No.: CAN/6902/2013)

The CAN application bearing no. CAN No. 6902 of 2019 (old number) corresponding to IA NO: CAN/1/2013 (new number), is relatable to a prayer for condonation of delay.

Learned advocate Mr. Sanjay Paul, appearing for the appellant/insurance company submits that though there has been delay of 23 days in filing the appeal beyond the statutory period of limitation, but there are good grounds/circumstances preventing thereby the petitioner from preferring the appeal within period of limitation.

Mr. Ashique Mondal, learned advocate representing respondents/claimants submits that

there has been huge delay caused in preferring the appeal, which must be taken in view in consideration of application for condonation of delay.

In the relevant averments of the pleadings, petitioner has explained the delay. The delay thus explained, appears to be sufficient. Accordingly, delay stands condoned. The CAN application is thus disposed of.

F.M.A.T. 813 of 2013

Learned advocate for the appellant/insurance company furnishes informal paper book in Court urging thereby for expeditious disposal of this case, even going to the extent of giving a go-by to the rules involved in the process.

Learned advocate for the claimants/respondents does not dispute with expeditious disposal of this appeal.

When both the parties are ad idem on the issue urging thereby for expeditious disposal of the instant appeal, the Court should not stand in the way.

Department to register the instant case as FMA upon furnishing relevant particulars, and the case is taken as on day's list, in spite of the matter being listed today under the heading "FMAT".

The appeal has been preferred by the appellant/insurance company impugning the judgment and award dated 11.03.2013, passed by

learned Judge, Motor Accident Tribunal, Bench- VIII, City Civil Court at Calcutta in the M.A.C. Case No. 295 of 2009, granting compensation to the tune of Rs. 6,24,000/- on a claim under Section 166 of the Motor Vehicles Act, in a road traffic accident, occurred on 11th September, 2008, by reason of involvement of a vehicle bearing registration no. WB-01Y/8005, resulting in death of deceased victim due to rash and negligent driving of the offending vehicle.

The prime and solitary ground taken in this appeal is the denial of the involvement of the offending vehicle.

Mr. Paul, appearing for the appellant/insurance company submits that learned Tribunal has erroneously fastened the liability upon the appellant/insurance company to compensate the respondents/claimants ignoring certain revealing facts, what has been easily transpired from the F.I.R. lodged by the father of the deceased victim, and a written letter, dated 15th December, 2008, addressed to the Deputy Commissioner of Police, Traffic Department, by pillion rider of victimized vehicle, revealing a contrary version as regards involvement of vehicle to the accident under reference. The learned Tribunal did not consider the significant fact that the rider of the said motorcycle was ultimately charged with the offence by police authorities, and the said rider, though cited as a witness, could not be

summoned by the Tribunal to ascertain the genuine involvement of the offending vehicle.

The contradictions, as regards factual aspects revealed from the F.I.R. and the written complaint of the rider, addressed to the police authority, according to appellant/insurance company, would be sufficient enough to deny the involvement of the offending vehicle.

The award is thus illegal, even awarded denying the materials revealed in the evidence, adduced during the trial.

Per contra, Mr. Mondal, representing the claimants/respondents, in reply, taking recourse to the Section 170 of Motor Vehicles Act, submits that even after getting leave under Section 170 of the M.V. Act, appellant/insurance company itself failed to call upon any witness on its behalf to establish its case.

According to respondents/claimants, while endeavouring to deny the involvement of the offending vehicle, the owner as well as the rider of the offending/insured vehicle are the best witnesses to support the case of the appellant/insurance company, if any, but that exercise could not be done by summoning them at right point of time.

Mr. Mondal, learned advocate representing respondents/claimants, has relied upon judgments, passed by Division Bench of this Court reported in ***(2010) 1 TAC 343*** delivered in the case of ***The New***

India Assurance Co. Ltd. Vs. Mita Samanta & Ors., and another unreported decision, rendered by the Division Bench of this Court in ***F.M.A.T. 201 of 2018*** delivered in the case of ***Bajaj Allianz General Insurance Company Limited Vs. Anjali Mondal & Anr.*** to establish that the best witnesses to deny the involvement of the offending vehicle remained unexamined by the appellant/insurance company. In the case of ***Mita Samanta (Supra)***, the Division Bench of this Court has noticed the ratio of the Apex Court decided in the case of ***Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif & Ors***. reported in ***AIR 1968 SC 1413***, and in the case of ***Vidyadhar Vs. Mankikrao & Anr.*** reported in ***AIR 1999 SC 1441***, that unless and until the best witness is adduced before the court of law, the disputed question of fact cannot be adjudged properly. Same was the view in a judgment rendered in the case of ***Anjali Mondal (Supra)*** delivered by Division Bench of this Court.

Supporting the judgment of the Tribunal, Mr. Mondal submits that there lies noting to be interfered with in the instant appeal, because the learned Tribunal has considered the pros and cons of the case in doing necessary quantification of award in the terms of the settled proposition of law.

The learned advocate for the respondents/claimants further submits that though respondents/claimants have filed cross-objection

bearing no. COT 113 of 2018, dissatisfying with the award, but at this stage he does not want to press the COT. The COT being not pressed by the respondents/claimants, there arises no occasion to return any decision thereunder.

The foremost ground so far taken, as it reveals from the submission advanced by the both the parties to this case, is the denial of involvement of the offending vehicle.

In the absence of best witness being examined to support the denial of involvement, mere assertion denying the involvement would not be sufficient to challenge the award disputing with the involvement of the offending vehicle. When appellant/insurance company obtained leave under Section 170 of the M.V. Act to summon the best witnesses, necessary for effective adjudication of the claim case, but subsequently for the reasons best known to the appellant/insurance company, the best witnesses could not be produced before the adjudicating body, in such circumstances, it would be preposterous to suggest that it was the Tribunal, who itself could have summoned the best witnesses after holding against the claimants/respondents.

At the same time, the Court cannot be oblivious of the provisions available under Section 114(g) of the Evidence Act to draw adverse presumption against the appellant/insurance company.

Having considered the rival submissions of the parties to this case, and the judgments referred by the respondents/claimants, the Court finds sufficient reasons to hold that there is strong force in the submission advanced by the respondents/claimants.

Accordingly, the Court is not inclined to interfere with the findings reached by the learned Tribunal. In the result, the appeal fails.

At this stage, Mr. Mondal submits that respondents/claimants have not received the awarded sum till date.

Since, no amount has been received by respondents/claimants, the appellant/insurance company is directed to disburse the entire awarded sum together with interest, as assessed by the learned Tribunal in equal proportion, as already decided by learned Tribunal by way of NEFT/RTGS to the bank account of the claimants/respondents directly within a period of three (3) weeks from the date of receipt of the claimants' bank details.

For the effective realization and smooth payment of the awarded sum, learned advocate for the claimants/respondents are to supply bank particulars of claimants to the learned advocate of appellant/insurance company within a period of two (2) weeks from date.

Mr. Paul, learned advocate for appellant/insurance company, draws attention of the

Court that a statutory deposit of Rs. 25,000/- has already been deposited with the Registrar General of this Court. Learned Registrar General is directed to disburse the statutory deposit amount along with accrued interest to the appellant/insurance company after the entire awarded sum with interest is fully liquidated. If any approach is made thereafter, such disbursal shall be made to the insurance company within a period of four (4) weeks from date.

With the aforesaid directions, the instant appeal is disposed of.

There shall be no order as to costs.

In view of the disposal of this appeal and cross-objection, all connected applications, if any, are also disposed of.

The department is directed to send down the lower court records at once, if received in the meantime.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Subhasis Dasgupta, J.)