

S/L 8
08.11.2021
Court No.26
SD

FMAT 936 of 2014
With
CAN 1 of 2014
(Old CAN 8450 of 2014)
With
CAN 2 of 2014
(Old CAN 8463 of 2014)
(Via Video Conference)

The New India Assurance Co. Ltd.
Vs.
Sri Arnab Dey & Anr.

Mr. Parimal Kumar Pahari
... for the Appellant/Insurance Co.
Mr. Anup Kumar Beg
... for the Respondents/Claimants.

CAN 1 of 2014:(Old CAN 8450 of 2014):-

This is an application for condonation of delay in filing the instant appeal.

On perusal of the pleadings, this Court is satisfied that cause shown for delay in filing of the appeal is sufficient and prayer for condonation of delay should be allowed.

Accordingly, the application for condonation of delay being CAN 1 of 2014 (Old CAN 8450 of 2014) stands allowed.

FMAT 936 of 2014:-

This appeal has been filed against the judgment and award dated September 7, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, 9th Bench, City Civil Court, Calcutta in MAC Case No.82 of 2009 under Section 166 of the Motor Vehicles Act, 1988.

The fact of the case is that one Biswajit Karmakar received severe injuries in a motor vehicle accident which took place on February 2, 2008. The appellant/insurance company contested the said claim case but did not adduced

any evidence before the learned Tribunal in respect of the pleadings made in the written statement. The claimant adduced evidence before the learned Tribunal and was able to prove his case of 60% disability. The disablement certificate issued by medical board duly was marked as exhibit before the learned Tribunal.

The ground taken by the insurance company in the above appeal is that the claimant obtained a disability certificate issued by Dr. B.N. Bose Hospital, Barrackpore wherein his disability showing as 60% and also obtained disability card issued by Social Welfare Committee, Government of West Bengal showing the disability as 60% was not properly proved before the learned Tribunal by adducing cogent evidence.

Mr. Pahari, counsel for the insurance company further submits that the disability certificate issued by B.N. Bose Hospital and the discharge certificate issued by the Paramount Health Care to the respondent/claimant are totally false and fabricated and the respondent/claimant obtained an award from the learned Tribunal by producing false and fabricated documents that were not at all genuine. He further submits that all the injuries do not result in loss of earning capacity and the percentage of loss of earning capacity cannot be equated with the percentage of permanent disability.

Per contra, Mr. Beg, counsel for the respondents/claimants submits that the disability certificate issued by the B.N. Bose Hospital and the discharge certificate issued by Paramount Health Care were duly exhibited before the learned Tribunal in presence of counsel for the insurance company and at the time of trial before the learned Tribunal, the counsel for the insurance company neither raised any objection nor they produced any single piece of documents to controvert the claim of the

respondents/claimants before the learned Tribunal and the learned Tribunal was pleased to pass the contested award in presence of both sides in favour of respondents/claimants. After passing the contested award the insurance company also filed a review application which was also rejected by the learned Tribunal.

After considering the submissions made by both sides, this Court held that the insurance company neither adduce any rebuttal evidence before the learned Tribunal nor they produced any piece of documents to controvert the claim of the respondents/claimants. Now they came up before this Hon'ble Court challenging the said award and argued that the award was passed on the basis of false documents. The grounds taken by the insurance company in the above appeal are not at all convincing and the same has no merit and accordingly, the appeal filed by the insurance company is dismissed and I upheld the award passed by the learned Tribunal dated September 7, 2011.

Mr. Pahari, counsel for the insurance company also submitted that the entire awarded amount passed by the learned Tribunal in the claim case has already been deposited before this Court.

Therefore, the Registrar General is directed to pay the entire amount lying with him as deposited by the insurance company pertaining to the instant appeal together with accrued interest thereon to the claimant, Biswajit Karmakar, through NEFT/RTGS upon furnishing bank details and proper identification within 30 days from the date of receipt of proper application along with bank particulars.

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, connected application, if any, is also disposed of.

The Registry is directed to send down the lower court records at once, if received by this time.

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

(Shekhar B. Saraf, J.)