

S/L 1
28.7.2021
Court No.26
SD

FMAT 1842 of 2009
With
CAN 1 of 2010
(Old CAN 693 of 2010)
With
CAN 2 of 2010
(Old CAN 703 of 2010)
With
FMAT 1564 of 2009
With
CAN 1 of 2009
(Old CAN 9224 of 2009)
(Via Video Conference)

The New India Assurance Co. Ltd.
Vs.
Smt. Rita Dhali & Anr.

Mr. Parimal Kumar Pahari
...for the Appellant/Insurance Co.
Mr. Amit Ranjan Roy
...for the Respondent/Claimant.

CAN 1 of 2010 (Old CAN 693 of 2010):-

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 2010 (Old CAN 693 of 2010) stands allowed.

F.M.A.T. 1842 of 2009:-

The appeal is directed against the judgment and award dated June 10, 2009 passed by the learned Commissioner, Workmen's Compensation (2nd Court), West Bengal in Claim Case No.392 of 2005.

The facts of the case are not in dispute. The claim was filed in connection with an accident dated August 11, 2005 when one Uttam Kumar Dhali died.

The appeal is preferred by the Insurance Company, *inter alia*, primarily on the ground that Insurance Company was not liable at the first instance to bear the compensation payable to the claimant. According to Mr. Parimal Kumar Pahari, counsel appearing on behalf of the appellant/Insurance Company, it is the employer who is liable to pay compensation and such employer is thereafter at liberty to submit an insurance claim for reimbursement by the Insurance Company.

Upon reading the relevant provisions of the Workmen's Compensation Act, 1923, I am of the view that the compensation found payable to the claimant cannot be directed to be made good by the Insurance Company; the liability is that the insured employer should pay and recover from the Insurance Company. However, Mr. Pahari has very fairly submitted that in view of a valid insurance policy issued by the New India Assurance and the claimant being a poor person would otherwise be prejudiced if remand was ordered, it shall pay compensation to the claimant. He further submits that the sum of Rs.4,31,622/- has been deposited before the learned Commissioner Workmen's Compensation (2nd) Court. He submits that the above sum along with interest accrued thereon, if any, may be disbursed to the claimant.

Mr. Amit Ranjan Roy, counsel appearing on behalf of the claimant, does not dispute the above contention of Mr. Pahari and is further agreeable to accept the amount deposited by the insurer in the learned Commissioner Workmen's Compensation (2nd) Court.

In light of the above submissions, the claimant/respondent shall furnish particulars of her bank account before the learned Commissioner, Workmen's

Compensation (2nd) Court within three weeks from date. Upon deposit of such details, the learned Commissioner is directed to pay the deposited amount along with accrued interest thereon, if any, to the claimant/respondent in accordance with law.

FMAT 1564 of 2009

The instant appeal is another appeal filed by the same claimant against the selfsame award passed by the learned Commissioner.

In view of the settlement reached between the parties, counsel for the claimant, upon instruction, does not wish to proceed with this appeal and accordingly, it is treated as withdrawn.

With the aforesaid directions, both the appeals are disposed of.

There shall be no order as to costs.

In view of the disposal of this appeal, connected applications, if any, are 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.)