

06.07.2021

SS

F.M.A. 257 of 2021

C.A.N, 1 of 2021

(Via Video Conference)

Bajal Allianz General Insurance Co. Ltd.

Vs.

Somsubhra Sen & anr.

Mr. Soumalya Ganguli

...For the Appellants/Insurance Co.

Mr. Ashique Mondal

... For the respondent no.1/claimant

Vakalatnama filed on behalf of the respondent no.1/claimant be kept with the record.

Re : **C.A.N. 1 of 2021**

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

After hearing the parties and on perusal of the pleadings, this Court is satisfied with the 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 2021 stands allowed.

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

The department is directed to issue F.M.A. number immediately.

Re : **F.M.A. 257 of 2021**

This instant appeal is directed against the judgment and order dated September 22, 2020 passed by

the Learned Motor Accident Claims Tribunal cum Additional District Judge, Fast Track Court-V, Alipore, South 24-Parganas in M.A.C. Case no. 22 Of 2017.

The claim was filed under Section 166 of the Motor Vehicles Act, 1988. The Learned Advocate for the appellant/Insurance Company submits that the impugned judgement is unjust and erroneous and that the learned Tribunal has failed to exercise the jurisdiction vested in it. The appeal has been preferred by the appellant/Insurance Company primarily on the ground of quantum. More specifically, the appellant/Insurance Company has disputed the reimbursement of the medical expenses incurred by the respondent no.1/claimant. The learned Advocate for the appellant/Insurance Company argues that although the medical expenses to the tune of Rs.4,24,539/-was incurred by the respondent no.1/claimant, Rs.3,42,86/- has been reimbursed to him under West Bengal Health Scheme, 2008. The claimant was covered under the said scheme due to his mother's employment with the Government of West Bengal. The learned Advocate for the appellant/Insurance Company argues that although Rs.3,42,866/- has been reimbursed to the claimant under West Bengal Health Scheme, 2008 it has been unjustly awarded to him by the learned Tribunal below. This, according to Mr. Ganguli, amounts to unjust enrichment of the respondent no.1/claimant and hence is impermissible under law.

Per contra, the learned Advocate for the respondent no.1/claimant argues that the award passed by the learned Tribunal below is absolutely reasonable and the award constitutes just and realistic compensation. The learned Advocate for the respondent no.1/claimant argues that the award should not be interfered with since the primary contention of the appellant/Insurance company is contrary to established precedents. In this context he relies on two judgements passed by this Hon'ble Court being **The New India Assurance Co. Ltd. Vs. Bimal Kumar Shah**, reported in **2019 ACJ 1532** and also **National Insurance Co. Ltd. Vs. Sohna Singh & ors.**, reported in **2020(1) TAC 73 (CAL)**.

In view of the judgement passed in **New India Assurance Co. Ltd. Vs. Bimal Kumar Shah**, reported in **2019 ACJ 1532** it is no more *res integra* that even if the claimant receives reimbursement of the incurred medical expenses through a mediclaim policy, the same should not be deducted from the compensation awarded under the Motor Vehicles Act, 1988. The same principle has been subsequently followed in the judgement passed in **The National Insurance Co. Ltd. Vs. Sohna Singh & ors.**, reported in **2020(1) TAC 73 (CAL)**. Thus, the learned Tribunal below was not wrong in awarding Rs.3,42,866/- to the respondent no.1/claimant although he had been reimbursed under West Bengal Health Scheme, 2008.

In view of the above discussion and since no other points are raised either by the Insurance Company or the claimant, the appeal is disposed of. The respondent no.1, claimant is entitled to the sum awarded as compensation by the learned Tribunal below.

The learned Advocate for the appellant/Insurance Company submits that the he had deposited the entire awarded amount along with interest being Rs.7,69,590/- before the Registrar General of this Hon'ble Court in terms of an order dated 02.02.2021. The respondent no.1/claimant shall be entitled to a consolidated sum of Rs.7,69,590/- on account of compensation together with accrued interest. The respondent no.1/claimant is granted liberty to approach the Registrar General of this Court for release of such sum together with accrued interest. If an approach is made, the Registrar General shall take immediate steps to release the same within four weeks from date.

With the aforesaid direction, the instant appeal and connected applications shall stand disposed of.

There will be no order as to costs.

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

(Shekhar B. Saraf, J.)