IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

21.11.2022
SL No.09
Court No. 654
Ali

F.M.A.T. 104 of 2020
IA No: CAN/1/2021

Serina Khatun Halsana & Ors.
Vs.
The National Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
....for the Appellants-claimants.

Ms. Sucharita Paul
......for the respondent No. 1-Insurance Co.

Re: CAN 1 of 2021

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

Mr Amit Ranjan Roy, learned advocate for appellants-claimants submits that due to acute financial stringency there has been delay in preferring the appeal. He prays for condonation of delay.

Mrs Sucharita Paul, learned advocate for respondent no.1-insurance company opposes such prayer for condonation of delay.

It appears from the report of Additional Stamp Reporter dated 3.2.2020 that there is a delay of 464 days in preferring the appeal. The appellants-claimants have stated in their application that due to acute financial stringency there has been delay in filing the appeal. Bearing in mind the grounds as well the beneficial piece of legislation I am inclined to condone the delay of 464 days in filing the appeal. Accordingly the delay is condoned.

The application being no. **CAN 1 of 2021** stands disposed of.

The appeal is formally admitted and registered.

Learned advocate for the appellants-claimants submits that appeal is filed solely on the ground that learned tribunal failed to grant interest from the date of filing of the claim application, hence calling for of lower court records as well as preparation of informal paper-books be dispensed with. In view of such submissions calling for of lower court records as well as preparation of informal paper-books is dispensed with at present.

Learned advocate for appellants-claimants submits for dispensing with service of notice of appeal upon respondent no.2-owner of the offending vehicle as he did not contest the claim application before the learned tribunal. It appears from the impugned judgment that respondent no.2-owner of the offending vehicle did not contest the claim application before the learned tribunal and the case was disposed of *exparte* against him. In the aforesaid backdrop service of notice of appeal upon respondent no.2-owner of the offending vehicle is dispensed with.

The appeal is taken up for hearing.

This appeal is directed against the judgment and award dated 28th June, 2018 passed by Learned District Judge Cum Motor Accident Claims Tribunal, Nadia, in MAC Case No. 376 of 2012 under Section 163A of Motor Vehicles Act, 1988.

Mr Amit Ranjan Roy, learned Advocate for appellants-claimants submits that the learned tribunal failed to grant interest from the date of filing of the claim application rather the interest has been granted as a default clause. He further points out that the amount under the conventional head namely loss of estate has not been taken into consideration by the learned tribunal. In light of his aforesaid submissions he prays for modification of the order of the learned tribunal.

Mrs Sucharita Paul, learned advocate for respondent no.1-insurance company submits that the appellants-claimants have already received the amount awarded by the learned tribunal along with certain portion of interest however she fairly submits that as per the Second Schedule to the Motor Vehicles Act claimants are entitled to loss of estate.

It appears from the impugned judgement that the learned tribunal directed the insurance company to satisfy the award within four weeks in default such amount shall carry interest. Accordingly, such direction of the learned tribunal needs to be modified to the extent that the claimants are entitled to receive interest @ 6% per annum from the date of filing of the claim application (i.e 20.12.2012) on the compensation amount granted by the learned tribunal of Rs.4,15,000/- till the deposit was made before the learned tribunal less interest already received (if any).

Further it is found that no such amount of compensation under the conventional head namely loss of estate has been granted by the learned tribunal. As per the Second Schedule to the Motor Vehicles Act the appellants claimants being wife and children are entitled to loss of estate of Rs.2500/-.
The other findings of the learned tribunal have not been challenged in the appeal.

Thus the total compensation comes to Rs.4,17,500/-. It is informed that the appellants-claimants have already received the amount of compensation of Rs.4,15,000/- with interest.

Accordingly the respondent no.1-insurance company is directed to deposit the balance amount of Rs.2,500/- along with interest @ 6% per annum from the date of filing of the application till deposit is made before the learned Registrar General, High Court, Calcutta and the interest on the compensation amount, granted by the learned tribunal, as indicated above in the foregoing paragraph, by way of a cheque before the learned Registrar General, High Court, Calcutta within a period of five weeks from the date of this order. The learned Registrar General, High Court, Calcutta shall disperse the aforesaid amount in favour of the appellants-claimants in equal proportions upon satisfaction of their identity.

Appellant no.1, mother and natural guardian of minor appellant no.2, shall receive the share of the said minor and shall invest the share of the minor in any fixed deposit scheme of nationalized bank or post office till the minor attains majority.

With the aforesaid observation the appeal and all connected application stands disposed of.

Interim order if any stands vacated.

Urgent photostat copy if applied for be supplied to the parties, on compliance of legal formalities.

(Bivas Pattanayak, J.)