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**14.09.2022**
Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

**FMA 1199 of 2013**
**with**
**IA No. CAN 1 of 2013 (CAN 1206 of 2013)**
**with**
**CAN 2 of 2014 (CAN 787 of 2014)**

The Oriental Insurance Co. Ltd.
Vs.
Mohiuddin Molya & Anr.

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

Mr. Jayanta Kumar Mondal
... For the respondent/claimant

This appeal is directed against the award passed on 12th December, 2012 by the learned Judge, Motor Accident Claims Tribunal, 6th Court, Alipore, 24-Parganas (South) in MAC Case No.71 of 2010 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge passed an award to the tune of Rs.5,59,700/- along with interest @ 8% per annum from the date of filing of the claim application till the actual payment. The claim petition was filed on account of injury sustained by Mohiuddin Molya by the involvement of the vehicle (Lorry) bearing registration no.WB-23/9760. A police case was started under Sections 279/338 of the Indian Penal Code and charge sheet was submitted against the driver of the vehicle. The victim was admitted in a Government hospital and ultimately one of his legs was amputated. The claimant filed the application before the learned Tribunal claiming Rs.5 lacs.

In course of trial, the injured examined himself as PW-1 and one eye-witness as PW-2. From their evidence, it appears that the alleged accident has been proved and further ratified by the police reports. In course of evidence, one disability certificate has been filed showing 70% disability due to amputation of leg and that disability certificate was admitted in evidence as Ext.11 without any objection.

Considering all these evidences and documents produced in support of the claim petition, the learned Judge of the Tribunal calculated the award as Rs.5,59,700/- including statutory compensation after applying multiplier of 17 in terms of age along with interest @ 8% per annum.

On scrutiny of the judgment and award, I find hardly any scope to interfere with the computation of award by the learned Tribunal.

Learned advocate appearing on behalf of the appellant/Insurance Company submitted that on behalf of the claimant, another claim petition was filed before the Diamond Harbour Tribunal prior in time, i.e., 14th June, 2010, which was dismissed for default. Therefore, according to the learned advocate for the appellant/ Insurance Company, this claim petition is barred by *res judicata*.

The submission made on behalf of the appellant/ Insurance Company, in my opinion, is devoid of merits. Such plea of *res judicata*, as I find from the record, was never raised before the learned Tribunal in course of trial. That apart, this issue of *res judicata* was also not dealt with by the learned Tribunal.

Learned advocate appearing on behalf of the appellant/Insurance Company has further argued on the point of disability certificate that the author of the certificate has not been examined for testing the veracity of the document itself. In support of his contention, he placed a case of the Hon'ble Apex Court reported in (2008) 7 SCC 305 (Rajesh Kumar Alias Raju v. Yudhvir Singh & Anr.).

In our case, the disability certificate (Ext.-11) shows that it was issued by the Medical Board consists of two doctors and the document was admitted in evidence without any objection. On the contrary, Rajesh Kumar Alias Raju (supra) held the disability certificate has to be ratified by the author of the document itself. In the aforesaid case, the disability certificate was filed after two years and the certificate was issued by doctor who did not treat the patient, unlike our case where the disability certificate was issued by the Medical Board of the Government Hospital where the victim was treated. Therefore, the ratio of the decision of Rajesh Kumar Alias Raju (supra) is not applicable to our dispute.

Considering all the facts and circumstances of the instant case, I find that the learned Tribunal rightly assessed the award at Rs.5,59,700/- along with interest @ 8% per annum. From the record, it is seen that the appellant/Insurance Company though deposited the amount with the learned Registrar General but did not deposit the interest @ 8% per annum from the date of filing of the claim application till the deposit before the learned Registrar General.

Therefore, the appellant/Insurance Company is directed to deposit the interest @ 8% per annum from the date of filing of the claim application till the deposit thereof before the learned Registrar General of this Court within six weeks from date.

The respondent/claimant is entitled to withdraw the amount.

The learned Registrar General will disburse the amount along with accrued interest to the claimant/respondent on proper identification and receipt.

With the above observation, the appeal, being FMA 1199 of 2013, stands disposed of.

All pending applications, if any, also stand disposed of accordingly.

Records of the learned Tribunal be transmitted back immediately.

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

**(Bibhas Ranjan De, J.)**