19.12.2022
Sl. No. 2
Ct No. 654
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F.M.A. 1541 of 2017
IA No: CAN/1/2017 (Old No.:CAN/5195/2017)

IFFCO Tokio General Insurance Co. Ltd.
Vs
Mainuddin Khan & Anr.

Mr. Rajesh Singh
....for the appellant-Insurance Co.
Mr. L.M. Ghosh
.......for the respondent No. 1-claimant.

This appeal is directed against the judgment and award dated 20th December, 2016 passed by learned Judge, 2nd Bench, City Civil Court, Calcutta in M.A.C Case no. 203 of 2012 under Section 166 of the Motor Vehicles Act, 1988 granting compensation in favour of the injured-claimant to the tune of Rs. 3,11,000/- together with interest.

The brief fact of the case is that on 10th September, 2011 at about 11 AM while the victim was working as a cleaner of the vehicle bearing registration no. WB- 41E/5656 and was loading the vehicle at that time the driver of the vehicle in a negligent manner suddenly moved the vehicle due to which a heavy sack fell on the leg of the victim resulting in injury on his right leg and fracture on backbone. Due to the aforesaid injuries the injured-claimant became permanently disabled. On account of such injury and subsequent disablement the injured claimant filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation.

Upon considering the materials on record and the evidence adduced on behalf of the parties the learned tribunal granted compensation Rs. 3,11,000/-together with interest and liberty was granted to the insurance company to recover the compensation amount from the owner of the offending vehicle.

Being aggrieved by and dissatisfied with the impugned judgment and award the insurance company has preferred the present appeal.

Although the respondent no.2-owner of the offending vehicle entered appearance through his learned advocate but at the time of hearing none appeared to represent said respondent.

Mr Rajesh Singh, learned advocate for appellant-insurance company submits that the insurance company intends to press the ground relating to delay in lodging of the FIR which clearly shows non-involvement of the offending vehicle and on the point of granting higher interest on the compensation amount by the learned tribunal. He submits that there has been a inordinate delay of more than 3 months in lodging the FIR which clearly indicates non-involvement of the vehicle concerned.

Furthermore he submits that the learned tribunal has granted interest at the rate of 9% per annum on the compensation amount which ought to have been at the rate of 6% per annum. Moreover it is submitted that since the driver of the offending vehicle did not have valid and effective driving licence on the relevant date of accident which has also been established by the insurance company before the learned tribunal, the order of pay and recovery passed by the learned tribunal should be affirmed in the interest of justice.

Mr Laltu Mohan Ghosh, learned advocate for respondent no.1-claimant submits that the delay in lodging of the FIR has been duly explained therein and more so delay *per se* does not make the claim case doubtful. So far as the aspect of interest on the compensation amount is concerned he concurs with such submissions made on behalf of the insurance company and leaves the matter to the discretion of the court.

Having heard the learned advocates of respective parties I know proceed to decide the issues involved in the present appeal. The insurance company in the present appeal has precisely made twofold grounds *firstly* there is delay in lodging FIR raising doubt in the claimant's case of involvement of the offending vehicle and *secondly* the rate of interest on the compensation amount granted by the learned tribunal is higher and should be modified.

With regard to the first issue concerning delay in lodging of the FIR, Mr Singh, learned advocate for appellant-insurance company strenuously argued that such delay squarely indicates of non-involvement of the vehicle and at the same time makes the claim case doubtful. It appears that the incident took place on 10th September, 2011 and the FIR has been lodged on 22nd December, 2011. Thus there has been a delay of more than three months in lodging the FIR. It is found from the written complaint that on the subsequent date of incident the father of the injured-claimant informed the incident to the local PS however no steps were taken and thereafter in the month of December, 2011 the FIR came to be registered on the basis of the written complaint lodged by the injured-claimant. Although the insurance company has taken the ground of delay in lodging of the written complaint however from the materials on record there is no such evidence of fabrication or concoction or engineering of the written complaint. The Hon'ble Supreme Court in ***Ravi versus Badrinarayan and Others*** reported in ***2011(1) T.A.C 867 (SC)*** observed as follows:-

> *"20. It is well settled that the delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect the common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the Courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If Courts finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR the claim case cannot be dismissed merely on that ground."*

Bearing in mind the aforesaid observation of the Hon'ble Supreme Court and also keeping in mind the aspect that there is no such fabrication or concoction or engineering of the FIR it goes without saying that delay *per se* does not make the claim case doubtful and involvement of the vehicle therein questionable. Thus such ground does not stand to reason.

With regard to the second issue relating to the rate of interest it is found from the impugned judgment that learned tribunal has granted interest at the rate of 9% per annum on the compensation amount from the date of filing of the claim application till realization. Mr Singh, learned advocate for insurance company submits that the rate of interest should be granted at the rate of 6% per annum. Mr Ghosh, learned advocate for respondent no.1-claimant concedes to such submissions. In view of the above submissions this court is of the opinion that the rate of interest on the compensation amount should be made at the rate of 6% per annum from the date of filing of the claim application till realization.

The learned tribunal after holding that that the driver of the offending vehicle at the relevant time of accident did not have valid and effective driving licence granted liberty to the insurance company to recover the amount of compensation from the owner of the offending vehicle after satisfying such award. Such direction of the learned tribunal does not call for interference and is affirmed.

The other aspects such as the monthly income, the extent of disability affecting the future earnings have not been pressed into service by the appellant in the present appeal.

Accordingly the amount of compensation granted in favour of the claimant of Rs.3,11,000/- is affirmed with the modification that such amount shall carry interest at the rate of 6% per annum from the date of filing of the claim application till its realization. It is informed that the appellant insurance company has deposited the statutory amount of Rs. 25,000/-vide OD Challan 39 dated 6.4.2017 as well as the entire awarded sum along with interest amounting to Rs.4,32,238/- vide OD Challan no.2149 dated 1.12.2017. The aforesaid deposits along with accrued interest be adjusted against the entire compensation amount and interest thereon.

Parties shall be liberty to apply before learned Registrar General, High Court, Calcutta for getting information in respect of the amount lying in the fixed deposit account in relation to the deposits made by the insurance company. On such application been made learned Registrar General, High Court, Calcutta shall intimate of such information to learned advocate of the concerned party within two weeks from the date of such application.

On receiving such information from learned Registrar General, High Court, Calcutta the appellant–insurance company shall deposit the balance, if any, within four weeks of receiving intimation. Upon deposit of the balance amount, if any, with the learned Registrar General, High Court, Calcutta shall disburse the entire amount of compensation to the respondent-claimant upon satisfaction of his identity.

Any excess amount, if any, left after full disbursement shall be refunded to the appellant-insurance company.

With the aforesaid direction the appeal stands disposed of. The impugned judgment and award of the learned tribunal is modified to the aforesaid extent. No order as to costs.

All connected applications stand disposed of.

Interim order, if any, also stands vacated.

Let a copy of this order alongwith lower court records be sent to the learned tribunal for information.

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

(Bivas Pattanayak, J.)