15.02.2022
(S/L-10)
Ct.-18
(Susanta)

(**Via Video Conference**)

C.O. 2199 of 2019

Ataur Rahaman
-Vs-
The Oriental Insurance Company Limited & Anr.

Mr. Ashique Mondal,
.... For the Petitioner.

Mr. Parimal Kumar Pahari,
... For the Opposite Party No. 1.

The revisional application under Article 227 of the Constitution of India is directed against order no. 7 dated March 29, 2019 passed by the Fast Track, 2nd Court at Sealdah, District 24-Parganas (South), in Misc. Case No. 09 of 2018 arising out of Motor Accident Claim Case no. 33 of 2008.

The petitioner filed an application for compensation under Section 166 of the Motor Vehicles Act, 1988, registered before the Tribunal as Motor Accident Claim Case No. 33 of 2008.

The said case was disposed of by the Tribunal vide judgment and order dated February 26, 2018.

The Tribunal in the said claim case, inter alia, framed the following issue being the issue no. 4:-

> "***Was the offending vehicle covered under the Insurance***

Policy of the Oriental Insurance Company Limited, Opposite party no. 2 of the said claim case."

The said issue in the said judgment was answered as follows:-

"Issue No.4: The claimant has produced the concerned Insurance Policy under which the alleged offending vehicle has been covered and the said document has been marked in Evidence as Exbt-9. On a careful scrutiny of the said document, it is revealed that the said policy had a validity for the period 08-09-2006 till 07-09-2007. It is the admitted position of the case that the alleged accident took place on 30-01-2006. As such, it is clearly apparent that on the date of the accident, the offending vehicle was not covered under any valid insurance policy of the OP No.2. "

The petitioner filed an application seeking review of the said judgment registered as Misc. Case no. 09 of 2018.

The Tribunal by the order impugned has dismissed the said Misc. Case holding as follows:-

"*The petitioner has primarily sought for review of the decision of this Court in MACC No. 33 of 2008 on a two-fold ground. The first ground taken by the petitioner in this regard is that the Insurance Policy as filed by the petitioner in MACC No.33 of 2008 and marked as Exbt-9 clearly shows that the OP No.2 had issued another certificate for the vehicle in question for the previous year i.e. 08-09-2005 – 07-09-2006 and the said period covers the date of the alleged motor accident. Now, on perusal of the said Insurance Police [Exbt-9] filed by the petitioner in*

> ***MACC 33 of 2008, it is found that there is mention of a previous policy in respect of the offending vehicle and the said policy bears the number 1566/2006; but there is no mention of any period in respect of which the said Policy was valid and as such by mere mention of the fact that there was a previous policy, this Tribunal cannot presume that the said Policy was valid and in operation when the alleged accident took place. Moreover, in the claim application filed in MACC No. 33 of 2008, the petitioner has mentioned in Cl. 17 of the said application that the relevant policy covering the offending vehicle as issued by the OP No.2 bears the number 1478/2006 and as such the said previous policy as mentioned in the Policy Certificate [Exbt-9] does not tally with the claim of the petitioner. As such the said ground taken by the petitioner is not sustainable in law ."***

Learned advocate for the petitioner submits that the offending vehicle was under a valid insurance coverage as on the date of the accident and the said insurance policy being Policy No. 1566 of 2006 is in the custody of the petitioner, he seeks an opportunity to produce the said insurance policy.

The application filed by the petitioner seeking review of the judgment and order of the Tribunal disposing the claim case does not strictly qualify the requirements of Order XLVII of the Code of Civil Procedure, however, justice would be sub-served if the petitioner is permitted to produce the said insurance certificate before the Tribunal.

The order impugned is set aside, the Tribunal is requested to decide the said application for review afresh after giving the petitioner an opportunity to produce and prove the insurance certificate covering the offending vehicle as on the date of the accident in accordance with law.

C.O. 2199 of 2019 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)