14.9.2022
sl.15 & 16
ct No. 654
sk

F.M.A. 177 of 2022
CAN 4 of 2022
The Oriental Insurance. Co.Ltd.
Vd
Manika Rani maiti & Anr.
With
COT 17 of 2022
Manika Rani maiti
vs
Oriental Ins. Co. Ltd. & Anr.

Mr. Rajesh Singh...for the appellant.

Mr. Amit Ranjan Roy ...for the respondents.

Affidavit of service filed by the appellants be taken on record.

This appeal is directed against the judgement and order dated 8th February 2021 passed by Additional District Judge, Fast Track, Tamluk cum Motor Accident claims Tribunal in MAC case no 20 of 2016 granting compensation to the tune of Rs.23,13,120/ alongwith interest from the date evidence of PW1 under Section 166 of the Motor Vehicles' Act, 1988.

The brief fact of the case is that on 1.4.2015 at about 4:30 PM while the victim was standing near Nimtouri bus stand at that time the offending vehicle bearing no. WB 31/6699 dashed the victim with great force as a result of which he sustained serious injuries. The victim was shifted to the hospital by the local people and was also transferred to Calcutta for better treatment, however he succumbed to his injuries. The claimant being the mother of the deceased-victim filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation for herself.

Upon considering the materials on record in the evidence adduced the learned Tribunal allowed the application of the claimant to the tune of Rs. 23,13,120/-along with interest at the rate of 6% per annum from the date of evidence of Pw1.

Being aggrieved by and dissatisfied with the impugned judgement and award the appellant-Insurance company has filed the present appeal.

Mr Rajesh Singh, learned advocate for the appellant in his usual fairness submits that the appeal has been preferred on the sole ground that on the date of accident the driver of the offending vehicle did not have valid driving licence to drive the offending vehicle. However he concedes that such ground was not taken by the insurance company before the tribunal by way of written statement. In order to establish such fact the insurance company at the appellate stage has taken out an application under order 41 rule 27 of the Code of Civil Procedure for adducing additional evidence on the basis of the documents collected by the investigator of the insurance company and the application has been registered as CAN 4 of 2022. During the course of hearing he submits that if this court is inclined to reject the application for additional evidence in that event liberty shall be given to the insurance company to proceed against the owner before appropriate forum in accordance with law. With regard to the Cross objection filed on behalf of the respondents-claimants he fairly submits that the learned tribunal should have allowed interest on the principle sum from the date of claim application.

Mr Amit Ranjan Roy, learned advocate for the respondent no.1-claimant submits that the respondent no.1-claimant has filed a cross objection being no. 17 of 2022 seeking enhancement of compensation on the ground that the learned tribunal failed to allow interest from the date of claim application and has allowed same only from the date of evidence of PW1 which is utterly illegal and perverse.

The respondent no. 2-owner has not contested the application before the learned Tribunal and the matter proceeded *exparte* against him, as such service of notice of appeal upon the respondent-owner is dispensed with.

The present appeal by the Insurance Company is precisely based on the ground that the driver of the offending vehicle did not have valid and effective driving licence on the date of accident. Mr. Singh on behalf of the appellant-Insurance Company has strenuously argued that the investigator of the insurance company has collected documents showing that on the date of accident the driver of the offending vehicle did not have effective and valid driving license and such document is necessary to be brought on record for just adjudication of the case. On going through the written statement filed on behalf of the insurance company before the learned tribunal it is found that there is no specific averments made that on the date of accident the driver of the offending vehicle did not have effective and valid driving licence. From the document annexed to the application for production of additional evidence it is found that the application for getting the particulars of driving licence was made on 17th March 2017. The claim application appears to have been disposed on 8th February 2021. The appellant-insurance company in its application for additional evidence has not given any cogent reason as to what prevented the appellant-insurance company from producing such evidence before the learned tribunal. In the written statement the appellant-insurance company craved leave to file additional written statement. However no such additional written statement was filed by the appellant-insurance company incorporating such fact before the learned tribunal. It is trite law that evidence in the form of oral and documentary are led to prove facts pleaded and as such in the absence of specific pleadings the aforesaid backdrop the application for production of additional evidence under order 41 Rule 27 of the Civil Procedure Code being **CAN 4 of 2022** stands rejected.

Due to the aforesaid reasons, the appeal is also liable to be dismissed.

The respondent no.1-claimant has filed the Cross Objection being COT 17 of 2022 on the ground of interest being allowed from the date of evidence of PW1 instead of from the date of filing of the claim application.

Mr Roy, learned advocate for respondent no.1-claimant submits that as per the settled proposition of law the interest on the principle ought to have been allowed from the date of filing of the claim application however learned tribunal allowed the same from the date of evidence of PW1 without any basis and therefore such is required to be modified. Upon going through the impugned judgement of the tribunal it appears that the tribunal granted interest @ 6% per annum on the principle sum from the date of evidence of PW1 and not from the date of filing of the claim. I find substance in the submission of Mr Roy that the interest should have been allowed from the date of filing of the claim application.

Accordingly the impugned order of the learned tribunal is modified to the aforesaid extent. The claimant is entitled to get compensation of Rs. 23,13,120/- together with interest @ 6% per annum on said amount from the date of filing of the claim application till realisation of the amount.

It appears that the appellant-insurance company has deposited an amount of Rs. 25,000/- towards statutory deposit vide OD challan no.999 dated 17.11.2021 and Rs. 29,06,020/- including interest in terms of order dated 04.05.2022 vide OD challan no.521 dated 19.05.2022. As the appellant-insurance company has already deposited interest from the date of evidence of PW1 till payment was made in terms of order of this court, hence the appellant –insurance company is required to make payment of a sum equaling to Interest @ 6% per annum on the principle sum of Rs. 23,13,120/- from the date of claim application till evidence of PW1.

The aforesaid amount which has already deposited with learned Registrar General, High Court, Calcutta along with accrued interest shall be adjusted against the entire compensation amount payable to the respondent-claimant along with interest. Balance amount, if any, shall be deposited by the appellant-insurance company by way of cheque with the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Upon receipt of the aforesaid balance amount (if any) the learned Registrar General, High Court, Calcutta shall release the entire compensation amount deposited by the appellant-insurance company to the respondent-claimant upon satisfaction of her identity.

The appellant-insurance company is granted liberty to file suit in accordance with law if so advised.

In view of the above instant appeal being **FMA 177 of 2022** stands dismissed.

The Cross Objection being **COT 17 of 2022** is allowed.

All connected applications stands disposed of.

Interim orders, if any, stand vacated.

Urgent Photostat certified copy of the order, if applied for, be supplied to the parties as expeditious as possible after observing all legal formalities.

(Bivas Pattanayak J.)