

11.01.2022
(S/L-08)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 3585 of 2019

Bindu Paul (Minor) & Ors.
-Vs-
Divisional Manager on behalf
of New India Assurance Co. Ltd.

Mr. Krishanu Banik,
.... For the Petitioners.

Ms. Sucharita Paul,
.... For the Opposite Party.

The revisional application under Article 227 of the Constitution is at the instance of the claimants in a Motor Accident Claim Case and is directed against order no. 37 dated August 8, 2019 passed by the 5th Court of Motor Accident Claim Tribunal, Murshidabad in a Miscellaneous Case no. 123 of 2017.

The claim case being MV Case no. 244 of 2013 was allowed ex parte vide Award dated July 31, 2017.

The Insurance Company, the opposite party herein applied under Order IX Rule 13 of the Code of Civil Procedure for setting aside the said ex parte award registered as the said Misc. Case no. 123 of 2017.

The said Misc. Case was filed out of time, as such, an application for condonation of delay was also filed along with the said Misc. case.

Mr. Krishanu Banik, learned advocate appearing on behalf of the petitioners submits that the

Tribunal has committed serious jurisdictional error in allowing the application filed by the Insurance Company for setting aside the said ex parte award without condoning the delay.

Ms. Sucharita Paul, learned advocate appearing on behalf of the Insurance Company submits that the summons of the claim case although was served upon her client but the records of the said case since was misplaced, the Insurance Company could not appear in the said claim.

Mr. Banik responding to the said argument of Ms. Pal, sought to question the sufficiency of the cause shown by the Insurance Company to justify their non-appearance when the said ex parte award was passed.

However, in view of the limited scope of the present revisional application this Court is not inclined to go into the said question.

It is rightly submitted by Mr. Banik that the Tribunal below has committed jurisdictional error in allowing the said Misc. Case without condoning the delay, the order impugned therefore is not sustainable and is accordingly set aside.

The Tribunal is requested to decide the said Misc. Case and the connected application for condonation of delay afresh in accordance with law.

Since the accident took place in the year 2013 and the ex parte award was passed in 2017, the Tribunal is requested to make all endeavour to dispose of the Misc. Case and the application for

condonation of delay thereto as expeditiously as possible preferably within a period of three available effective working months of the said Court from the date of communication of this order and in doing so shall not grant any unnecessary adjournment to either of the parties.

It is made clear that this Court has not gone into the merit either of the said Misc. Case or of the application for condonation of delay thereto, it is for the tribunal below to decide those applications on merit.

C.O. 3585 of 2019 is disposed of with the above terms without any order as to costs.

Let this order be communicated to the Tribunal below by Special Messenger at the costs of the Insurance Company, such costs be put in within a week from date.

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.)