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22.03.2023
Ct. No.237
D.Hira

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 12 of 2014
with
CAN 1 of 2013 (Old No. CAN 6901 of 2013)
With
CAN 3 of 2023

The Divisional Manager, The Oriental Insurance
Company Ltd.
Vs.
Sannyasi Naskar & Anr.

Mr. Sanjay Paul.
... For the appellant

Mr. Subhankar Mandal.
... For the respondents

In re:- CAN 3 of 2023

The substitution application has been filed on account of death of the injured/respondent on 14th January, 2023 along with death certificate. The substitution petition filed on 20th February, 2023 stands allowed.

The department is directed to necessary incorporation of the substituted respondents namely Shachirani Naskar and Bharat Naskar.

In re:- FMA 12 of 2014

This appeal has been preferred at the instance of Oriental Insurance Company Limited on the sole ground of jurisdiction. The instant appeal was filed on the ground that learned Tribunal had no territorial jurisdiction to try the claim case as respondent/claimant resided within jurisdiction of Canning Police Station and also accident

took place within the jurisdiction of Canning police station and policy was issued by the Division No. 5, The Oriental Insurance Company Limited, having its office at 4, Government Place North, Kolkata – 700 001.

In this appeal further ground was taken assailing the disablement certificate on the ground that the doctor issuing the disablement certificate was not examined in this case.

In course of argument, learned Advocate Mr. Sanjay Paul appearing on behalf of the Insurance Company, in his usual fairness, has submitted that issue of jurisdiction taken in this appeal has no merit, in view of the principle laid down in the case of ***Malati Sardar vs. National Insurance Company Ltd.*** reported in **2016 (1) T.A.C. (SC) 337**, wherein the Hon'ble Apex Court observed in paragraph 12 as follows:-

“We are thus of the view that in the face of judgment of this Court in Mantoo Sarkar (supra), the High Court was not justified in setting aside the award of the Tribunal in absence of any failure of justice even if there was merit in the plea of lack of territorial jurisdiction. Moreover, the fact remained that the Insurance Company which was the main contesting respondent had its business at Kolkata.”

In addition to that the ground of admitting disablement certificate without examining doctor cannot stand in the way of accepting the same. It has become a trite law that disablement certificate issued by the Board cannot be said to be invalid for non-examination of the doctor of the Board.

Therefore, I find this appeal filed on behalf of the Insurance Company has no merit and is liable to be dismissed.

On careful perusal of the judgment pronounced by the learned Motor Accident Tribunal, I find that learned Tribunal awarded compensation to the tune of Rs.4,47,000/- along with interest.

Therefore, the substituted claimants are entitled to the awarded amount with the interest.

The appellant/Insurance Company has directed to deposit the awarded amount with interest for the impugned order passed by the learned Tribunal before the Office of the Registrar General, within six (6) weeks from date, if not already paid, after adjustment of statutory amount of Rs.25,000/- already deposited in the Office of the Registrar General.

The learned Registrar General is requested to disburse the amount to the substituted claimant in equal share on verification and proof of identity.

With the aforesaid observation, the instant appeal being FMA 12 of 2014 stands disposed of.

All pending applications, if there be any, stand disposed of.

Let a copy of this order along with the LCR be communicated to the Court of learned Tribunal 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.)