

11.08.2023

Ct.No.32

Sl. No.27.

KB

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

**F.M.A.T. (MV) 405 of 2022  
with  
IA No. CAN 1 of 2022**

**Nayani Das & Ors.  
Vs.  
New India Assurance Co. Ltd. & Anr.**

Mr. Subhankar Mandal  
... For the appellants/claimants.

Mr. Rajesh Singh  
... For the Insurance Company.

**In Re: IA No. CAN 1 of 2022**

Mr. Subhankar Mandal, Learned Advocate  
appears for the appellants.

Mr. Rajesh Singh, Learned Advocate appears for  
the Insurance Company.

Learned Advocate appearing on behalf of the  
appellants submits that the instant appeal has been filed  
beyond the period of limitation due to prevent by  
sufficient cause. He also refers paragraphs 7 and 8 of the  
said application to show the reasons for delay and prays  
for condonation of delay.

On the other hand, Mr. Singh formally objected  
the prayer.

Heard and on perusal of the application filed under Section 5 of the Limitation Act, it appears that the appellants could not file the appeal within the limitation as prescribed under Section 173 (1) of the Motor Vehicles Act, 1988 due to prevent by sufficient cause as specified in the application. Causes shown in the application are sufficiently explained and accepted. Thus, delay in filing appeal is stands condoned.

**CAN 1 of 2022** is thus disposed of with the above observation.

Accordingly, the appeal is formally admitted.

**In Re: F.M.A.T. (MV) 405 of 2022**

This appeal is exception to the judgment and award dated 28<sup>th</sup> January, 2019 passed by the Ld. Additional District & Sessions Judge-cum-Motor Accident Claims Tribunal, 5<sup>th</sup> Court, Malda in M.A.C.C. No. 314 of 2017 thereby allowed compensation to the tune of Rs. 3,45,500/= in favour of the appellants/claimants together with interest at the rate of 7% per annum from the date of filing of this case, i.e. from 22<sup>nd</sup> December, 2017 till the realization under Section 166 of the Motor Vehicles Act, 1988 by dismissing claim application on contest against O.P. No. 2/Insurance company and allowed ex parte against O.P. No.1/ owner observing therein that O.P. No. 1/owner of the offending vehicle is liable to pay the

compensation as Insurance Policy filed by the claimants was not covered on the date of accident, i.e. on 10<sup>th</sup> October, 2016.

Learned Advocate appearing on behalf of the appellants submits that the Ld. Tribunal erred in finding Insurance policy was not valid on the date of accident though claimants have mentioned the policy Number no. 51300031150100011228 and its validity from 12.11.2015 12 a.m. to 11.11.2016 in their claim application.

The said Insurance policy No. 51300031150100011228 clearly indicates on the left side of the renewal policy certificate which was marked as exhibits No. 5. However, the Learned Tribunal had taken the period of the validity i.e. from 12.11.2016, 12 a.m. to 11.11.2017 of the renewal policy No. 51300031160100011897 and finally came to the conclusion that the policy was not cover on the date of accident that is on 10<sup>th</sup> October, 2016 ignoring the validity of earlier policy number.

In support of his contention, filed copy of Insurance policy before this Court is taken on record.

On the other hand, Learned Advocate appearing on behalf of the Insurance Company on his usual fairness submits, on instruction of Insurance company, it came to know the offending vehicle no. WB-65/8039 was valid on the dated of accident as such the instant matter can be

disposed of without further delay and calling for lower court record.

In the light of submission of the parties and on perusal of record particularly insurance policy it appears the previous Policy No. 51300031150100011228 has been mentioned in the renewal Policy certificate marked as exhibit No. 5 and copy of the said Policy filed by the appellants today specifically indicates insurance policy was covered from 12<sup>th</sup> November, 2015, 12 A.M. to 11<sup>th</sup> November, 2016. Thus, this court is of the view that it was valid on the date of accident on 10.10.2016.

The unfortunate accident took place on 10<sup>th</sup> October, 2016, when the deceased was standing near Bulbulchandi Rail Station by the side of the road at that point of time, the offending vehicle, the bus bearing No. WB-65/8039 was coming from Malda side towards Nalagola side and suddenly dashed the deceased/victim. The said accident took place due to rash and negligent driving of the driver of the offending vehicle. It is proved by adducing oral and documentary evidence before the Learned Tribunal which is not disputed by the respondent/insurance company as such interference of decision on other issues by the Ld. Tribunal does not arise.

There is no dispute regarding granting of compensation amount Rs. 3,45,500/- by the Learned

Tribunal. However, the claim application was dismissed on contest against O.P. No.2/Insurance Company and allowed ex parte against O.P. No. 1 by Learned Tribunal and further directed the owner/O.P. No. 1 to pay the compensation amount to the claimants in the mode and manner stipulated in the operative portion of the judgment & award. Accordingly, judgment and award dated 28th January, 2019 is required to be modified on the basis of submission made by the parties and as facts revealed from the face of record that the policy was valid on the date of accident.

Hence, judgment and award dated 28<sup>th</sup> January, 2019 is hereby modified to the extent that the claim case allowed on contest against O.P. No. 2/Insurance company and ex parte against O.P. No. 1/ owner. The New India Assurance Co. Ltd. being the insurer of the offending vehicle is to indemnify the same and is liable to pay the compensation amount.

Consequently, Insurance Company is directed to deposit the compensation amount to the tune of Rs. 3,45,500/- within six weeks from this date together with interest at the rate of 7% per annum from the date of filing of the claim application, i.e. from 22<sup>nd</sup> December, 2017 till final payment in the office of the Learned Registrar General, High Court, Calcutta.

It is directed the appellants/claimants to submit bank details to the office of Registrar General within two weeks from the date of this judgment and award.

The Registrar General, High Court, Calcutta shall disburse the compensation amount so deposited in favour of the claimants in the same mode and manner as mentioned by the Learned Tribunal in its Judgment and award dated 28<sup>th</sup> January, 2019 directly through RTGS/NEFT in their respective bank accounts within two weeks from the date of submission of bank details upon full satisfaction and proper identification of the claimants.

**FMAT (MV) 405 of 2022** is thus disposed of.

Let a copy of this judgement and award be sent to the Learned Tribunal for information.

All parties to act in terms of a copy of the judgement and order downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

**(Ajay Kumar Gupta, J.)**