IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

05.02.2024
SL No. 176 & 177
Court No. 551
Ali

F.M.A.T. 338 of 2020
With
IA No.: CAN/1/2022, CAN/2/2022

The Oriental Insurance Co. Ltd.
Versus
Narayan Bar @ Narayan Chandra Bar & Ors.
With
COT 12 of 2021
Narayan Bar @ Narayan Chandra Bar & Ors.
Versus
The Oriental Insurance Co. Ltd. & Anr.

Mr. Rajesh Singh
…for the appellants/Insurance Co.

Mr. Subhankar Mandal
…for the respondent Nos. 1 to 3.

Affidavit of service filed on behalf of the Insurance Company is taken on record.

The instant appeal has been preferred against the judgment and award dated 4th November, 2019 passed by the learned Judge, Motor Accident Claims Tribunal, 5th Court, Howrah, in MAC Case no. 218 of 2013.

The claimants have preferred the instant appeal against the said award.

In Re.: CAN 1 of 2022

This is an application for condonation of delay filed by the appellant.

The report of the Stamp Reporter suggests that there are 42 days delays in preferring the instant appeal.

Heard the learned advocate perused the grounds; having heard the learned advocates and on perusing the grounds in the body of the application itself, it appears to me that the grounds are sufficient. Accordingly, the application being CAN 1 of 2022 under Section 5 of the Limitation Act is considered and allowed.

Delay in preferring the appeal is hereby condoned.

The appeal is formally admitted.

Register the same.

Accordingly, the application being **CAN 1 of 2022** is disposed of.

In Re.: CAN 2 of 2022

In pursuance to the order of this Court dated 21st April, 2023, the insurance company has deposited the entire awarded sum together with interest less the statutory deposit amounting to Rs. 2,35,150/- vide OD Challan No.573, OD dated 19.05.2023.

Considering the compliance made on behalf of the insurance company the interim order of stay passed by this Court on the earlier occasion is herby made absolute and be extended till the disposal of the instant appeal.

Accordingly, the application being **CAN 2 of 2022** is disposed of.

The claimant respondent Nos. 1 and 2 have appeared through learned advocate Mr. Subhankar Mondal. Mr. Mondal submits that the claimants have also preferred a cross appeal being COT no. 12 of 2021 against the same award. He also filed one application in the same COT being CAN 1 of 2023 for amendment in the memo of the cross appeal in respect of the name of the Insurance Company. Considering the submission and considering the body of the application, the cross objector/claimants are at liberty to correct the name of the Insurance Company in the cause title of the cross appeal.

FMAT 338 of 2020

A very limited point is involved in this appeal. Ld. Advocate Mr. Singh submits that the driver of the offending vehicle had no valid driving licence at the time of alleged accident; to prove the same, the Insurance Company has produced a witness before the learned tribunal as DW-1. From his deposition it would be revealed that the driving licence possessed by the driver of the offending vehicle was not valid at the date of accident. Mr. Singh further argued that the matter was argued at length before the learned tribunal but the learned tribunal has not considered the point.

Heard the learned advocate for the Insurance Company perused the observation of the learned tribunal it appears that the learned tribunal is of view that the driving licence of the driver, namely, Pramod Kumar Shaw for transport category was valid upto 25.12.2017. Learned tribunal further observed that the date of alleged accident was 06.07.2013, thus, the driver had the valid driving licence at the time of accident. From the internal page 6, para 4 of the impugned award, it appears that the DW-1 has deposed that initially the driving licence of the Pramod Kumar Shaw for the transport category was valid from 02.09.2008 to 01.09.2011. Thereafter, the same was renewed on 16.09.2014 and remained valid till 25.12.2017. Thus, it appears that on the date of accident i.e. on 06.07.2013 the driver, namely, Pramod Kumar Shaw had no valid driving licence under the transport category. It further appears that the Pramod Kumar Shaw is himself the owner of the offending vehicle who must have knowledge about the category of his driving licence. Considering the same, the observation of the learned tribunal appears to me not correct and it is liable to be set aside.

On that observation, the Insurance Company is not liable to pay the compensation in this case, rather, the owner of the offending vehicle who had every knowledge regarding the said accident is liable to pay the compensation. However, by virtue of the law laid down by the Hon'ble Apex Court passed in ***National Insurance Company Vs.***

Swaran Singh, the Insurance Company may be directed to pay the compensation intern, they are at liberty to recover the same from the owner of the offending vehicle.

The appeal appears to be meritorious on and it is liable to be allowed.

Cross appeal was preferred by the claimants/owner only on the ground that the learned tribunal has assessed the compensation on the basis of notional income of Rs. 15,000/- per annum. He argued that the accident happened in the year 2013 so in that score, the notional income may be adopted Rs. 3,000/- per month. Considering the observation of the learned tribunal it appears to me that the prayer in the cross appeal is reasonably one and it may be accepted. Accordingly, cross appeal is also allowed.

The claimants are entitled to get the compensation fixing the notional income of the deceased to be Rs. 3,000/- per month.

On that score, the observation of the learned tribunal regarding the compensation need be modified.

Accordingly, the just and proper compensation of this case assessed as hereunder:-

<u>Calculation of compensation</u>

1. Monthly Income :Rs. 3,000/-
2. Annual Income :Rs.36,000/-
   (Rs.3,000/- 12)

3. Less:1/3rd Personal Expenses	:Rs.12,000/-
	:Rs.24,000/-
4. Multiplier 18 (Rs.24,000/- X 18)	:Rs.4,32,000/-
5 Add: General Damages	:Rs.9,500/-
	:Rs. 4,41,500/-

After calculation the award comes to Rs. 4,41,500/-. The award shall carry interest @ 6% per annum from the date of filing of the claim application. It appears that the Insurance Company has already deposited the entire awarded sum of Rs.1,89,500/- together with interest total amounting to Rs. 2,60,150/- through the office of the learned Registrar General, High Court Calcutta. The office of the learned Registrar General, High Court Calcutta is directed to disburse the amount in the name of the claimants equally. The Insurance Company is directed to deposit the balance awarded sum of Rs. 2,52,000/- alongwith interest @ 6% per annum from the date of filing of the claim application within six weeks from the date of passing of this order through the office of the learned Registrar General, High Court Calcutta. On such deposit the claimants are at liberty to receive the same on usual terms and conditions subject to ascertainment of payment of deficit Court Fees.

The office of the learned tribunal shall act upon the certified copy of this order to receive the deficit court fees, if any.

The instant **FMAT 338 of 2020** alongwith **COT 12 of 2021** is disposed of.

After such payment being made, the Insurance Company is at liberty to recover the awarded amount from the owner of the offending vehicle according to the procedure laid down by the Hon'ble Apex Court in **Swaran Singh (supra).**

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)