

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**06.05.2024
SL No.213**

**Court No. 25
s.g.**

**FMAT 386 of 2018
with
IA No.: CAN/1/2018 (Old No. 2728/2018)**

**Smt. Aparna Mondal & Anr.
Vs.
The Oriental Insurance Co. Ltd.**

Mr. Swapan Kr. Pal,

.. for the appellant.

Ms. Sayanti Santra,

..for the respondent/Ins Com.

The instant appeal is preferred against the order dated 6th February, 2018 passed by the learned Tribunal cum District and Sessions Judge, (R.D Court), Paschim Medinipur in MAC case no. 418 of 2010.

The claimant has preferred the instant appeal against the impugned order. The Stamp Report suggests that the appeal is preferred in time.

Today is fixed for hearing of stay application. Learned Counsel for the claimant/appellants submits that a peculiar situation arised before the learned Tribunal when the MAC case was posted for peremptory hearing. On 6th February, 2018 the date was fixed for P.H. as last chance. The petitioner/claimant was present before the learned Tribunal along with his learned Counsel and file his

“haziran”. The Insurance Company files adjournment application on the personal ground of the conducting advocate. The learned Tribunal after hearing the submission, is of opinion that the record was posted for P.H. of several occasions; he also opined that as there are negative response on behalf of the petitioner, the said case was dismissed for default with a cost of Rs. 1 lakh to be deposited to DLSA.

Learned Counsel for the appellant submits that appellant/claimant was all along present before the learned Tribunal to conduct the case but the Insurance Company was absent. The learned Tribunal has erroneously passed the impugned order and dismissed the claim application with some costs. He submits that necessary order may be passed to remand the matter back to the learned Tribunal by setting aside the order of dismissal passed by the learned Tribunal.

Learned Counsel appearing on behalf of the Insurance Company submits that the impugned order was passed on February 2018 and instant appeal was preferred on May, 2018, now the matter is appearing before this Court in the year 2024. The Insurance Company shall suffer immense loss if the order passed by the learned Tribunal was set aside. The claim application which was filed in the

year 2010, if allow would carry a huge interest. She submits that the necessary order may be passed so that, the interest for the period of 2018 till today may not be considered at the time of passing the award, if any.

She further submits that the Insurance Company had no default in dealing the matter since 2018 – 2024. So, he prayed for necessary order.

Heard the learned Counsel, peruse the impugned order dated 6.2.2018. It appears to me that the learned Tribunal has passed the order in a slipshod manner without considering the materials-on-record. The application for adjournment was filed on behalf of the Insurance Company but the learned Tribunal has erroneously dismissed the claim case against the petitioner. The impugned order passed by the learned Tribunal appears to be illegal and not justified thus the same order is hereby set aside.

The order of dismissal passed by the learned Tribunal is along with cost imposed upon the appellant/claimant is hereby set aside.

The MAC case No. 481 of 2010 be hereby restored and remanded back to the learned Tribunal with a direction to the learned Tribunal that he shall dispose of the same within three months from the date of receiving the order.

The claimant is further directed to take appropriate steps so that the matter can be disposed of as directed by the Court.

However, I find no justification to entertain the submission on behalf of the Insurance regarding remission of interest. I make it clear that this Court has not entered into the merits of the matter. It is not possible to assess whether claimants will be successful or not. Thus the prayer for remission of interest could not be considered at this stage, however, the Insurance Company is at liberty to make the submission for remission of interest before the learned Tribunal at the appropriate stage.

Accordingly, FMAT 386 of 2018 along with connection application are disposed of .

LCR be sent down at once, if received.

(Subhendu Samanta, J.)