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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMAT 427 of 2019

CAN 1 of 2024

Pradip Kumar Biswas & Ors.

-Vs-

Bajaj Allianz Insurance Co. Ltd. & Anr.

For the Appellants/claimants : Mr. Muktakesh Das

For the respondent No.1/insurance co. : Rajesh Singh

For the respondent Nos.2/insurance Co. : **Ms. Sucharita Paul**

Heard on : 13.08.2024

Judgment on : 21.08.2024

Ananya Bandyopadhyay, J. :-

In Re: CAN 1 of 2024

1. The Learned Advocates for the appellants/claimants as well as the respondents/insurance company are present.
2. The application being CAN 1 of 2024 under Section 5 of the limitation Act has been taken up for hearing. The record reveals that a delay of 82 days in filing the instant appeal.
3. Considering the averments made in the CAN application being 1 of 2024 and in view of the beneficial legislative intent the delay of 82 days in filing the instant appeal is condoned.

4. The application being CAN 1 of 2024 is allowed.
5. The instant appeal has been filed against the judgment dated 29th September, 2018 passed by the Learned Additional District Judge, 2nd Court, Nadia at Krishnagar in MAC Case No.273 of 2009 under Section 163A of the Motor Vehicles Act, 1988.
6. The compensation award in the instant claim case to the extent of Rs.2,01,500/- is disputed in view of the Notification dated 22nd May, 2018 issued by the appropriate authority through Gazette publication and also the observation of this Court in *Urmila Halder v. The New India Assurance Company Ltd*¹.
7. The Learned Advocates for both the parties submitted that an application under Section 163A of the Motor Vehicles Act was filed by the appellants/claimants concerning an accident which occurred on 13.01.2009 at about 4.00 hours near Daradia Chhake within the jurisdiction of Khantapada P.S. Balasore, Orissa where the victim being one of the pilgrim was commuting by the offending vehicle being a Bus bearing registration No. WB-51/2099 which collided with a truck bearing registration No. WB-33A/3146 approaching from the opposite direction. The driver of the bus along with the victim expired as a result of such an accident.
8. The Learned Tribunal disposed of the issues framed and on appreciation of evidence pronounced the impugned judgment

directing the respondent Nos. 1 and 2 to pay a compensation to the tune of Rs. 1,00,750/- each amounting to Rs. 2,01,500/- to the appellants/claimants.

9. The occurrence of the accident, the veracity of the driving licence, route permit, etc. and other ancillary issues are not in dispute.
10. However, in view of the aforesaid notification and the decisions of the Hon'ble High Court at Calcutta as well as the Hon'ble Supreme Court, the claimants are entitled to a sum of Rs.5,00,000/-.

The notification dated 22.05.2018, inter alia, stated as follows:

1. "(a) Fatal accidents:
Compensation payable in case of Death shall be five lakh rupees".

11. The impugned judgment passed by the aforesaid tribunal is modified to the extent of Rs.2,98,500/- i.e. (Rs.5,00,000-Rs.2,01,500/-) along with interest to be paid at the rate of 6 % per annum from the date of filing of the application till the date of its actual realization.
12. The Learned Advocate for the appellants/claimants submitted to have received the compensation amount of Rs. 2,01,500/-.
13. The Learned Advocates for the respondent No.1/Bajaj Allianz General Insurance Company and respondent No.2/the Oriental Insurance Company are to deposit the balance sum of Rs. 1,49,500/- each along with 6 % per cent interest per annum from

¹ 2019(2)TAC 143

the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.

14. The victim was served by the husband and three children who had filed the instant appeal. During the pendency of the appeal the husband expired and his name has been deleted in the memo of appeal. The three of the appellants are presently on record.
15. On receipt of the said amount, the office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants in equal proportion as mentioned in the impugned judgment passed by the Additional District Judge, 2nd Court, Nadia at Krishnagar in MAC Case No. 273 of 2009 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Courts fees.
16. The instant appeal is disposed of accordingly.
17. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)