

21.08.2023
SL No.31 & 32
Court No. 551
Ali

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

**FMA 2404 of 2014
IA No. CAN/4/2023**

**National Insurance Co. Ltd.
Vs.
Rupali Ojha & Ors.**

With

**COT 78 of 2014
Rupali Ojha & Ors.
Vs.
National Insurance Co. Ltd.**

Mr. Parimal Kr. Pahari
....for the appellant in FMA 2404 of 2014
and respondent in COT 78 of 2014.

Ms. Sima Ghosh,
Ms. Sabina Khatun
.....for the respondents in FMA 2404 of 2014
and appellants in COT 48 of 2014.

In Re.: CAN 4 of 2023

This is an application for recalling of an order dated 10th February, 2023 passed by the division Bench of this court. Learned advocate for the insurance company submitted that the learned division Bench has dismissed the instant appeal for non removal of the defects.

He submitted that the defect was noted by the Assistant Register of this Court with a fact that the filled up notices form for service of notice of appeal upon the respondent Nos. 4 and 5 within stipulated period was not filed by the insurance company-appellant.

He submitted that the respondent Nos. 4 and 5 are the owners of the offending vehicle and they are not contesting the matter before the learned tribunal. The impugned award was passed ex-parte against them so the instant appeal need not be heard in presence of the respondent Nos. 4 and 5. On that score the notice of appeal upon the respondent Nos. 4 and 5 may be dispensed with.

Heard the learned advocate perused the application being CAN 4 of 2023. The contention of learned advocate for insurance company appears to be justified.

The CAN 4 of 2023 is considered and allowed.

Accordingly, the instant appeal is hereby restored to its original file and number.

The order passed by the division Bench of this court dated 10th February, 2023 passed in this appeal is hereby recalled.

The respondent Nos. 4 and 5 being the owner of the vehicle and being the non-contesting party before the learned tribunal is not required to be served a notice of appeal by the insurance company-appellant.

The contesting respondent claimants are already appeared in this matter.

The CAN 4 of 2023 is disposed of.

It appears that the LCR has already been sent down to the office of the learned tribunal. As the appeal has revived and restored to its original file and number.

The department is directed to call for the LCR again from the office of the learned tribunal at once through the special messenger.

The appellant is directed to deposit the cost of special messenger within a week. On receiving the LCR a notice has to be served upon the appellant within a fortnight.

Let the matter appear in the list on September 15, 2023.

(Subhendu Samanta, J.)