

S/L - 8
25.11.2024
Court. No. 3
S.Kundu

**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

C.O. 194 of 2024

ICICI Lombard General Insurance Company
Vs.
Sujata Barman & Ors.

Mr. Hirak Barman,

...for the petitioner.

1. The instant revisional application has been filed *inter alia*, challenging the Order No. 36 dated 19th August, 2024 passed in connection with MACC Ex. No. 07 of 2020, by the learned MACC Tribunal and Additional District Judge, 1st Court, Cooch Behar.
2. The brief facts are that a claim application filed by the opposite parties, which was registered as MACC No. 13 of 2012 under Section 166 of Motor Vehicles Act, 1988 (hereinafter referred to as the said Act) was disposed of on contest by judgment and award dated 29th June, 2017. By the aforesaid award the learned Motor Accident Claims Tribunal was *inter alia*, pleased to direct the petitioner to pay a sum of Rs.4,37,500/- along with interest at the rate of 6% per annum from the date of filing of the claim case i.e, 17th February, 2012 till realisation of the entire amount.

3. Mr. Burman, learned advocate appearing in support of the revisional application would submit that a total number of five cheques all dated 29th November, 2017 were issued in the name of the claimants and the same were deposited with the learned Tribunal on 13th December, 2012. It is petitioner's case that subsequently, the petitioner received a notice from the learned Tribunal in connection with the MACC (Execution) No. 07 of 2020. From the aforesaid, it would transpire that the same had been filed alleging non-compliance of the award and for the subsequent execution thereof.
4. Bringing the factum of deposit of the above five cheques to the notice of the learned Court, an application was filed by the petitioner on 16th October, 2023, with a prayer to dismiss the execution application.
5. Learned advocate for the petitioner would submit that the above application filed in connection with the aforesaid execution case, was dismissed by order dated 19th August, 2024 by holding that the petitioner was obliged to make payment of additional interest, notwithstanding the petitioner having already deposited the entire awarded amount along with interest. The above finding is beyond the scope of the Award and should be set aside.
6. Having heard the learned advocate appearing in support of the revisional application and after

considering the materials on record, it transpires that originally the MACC Case No. 13 of 2012 under Section 166 of the Motor Vehicles Act, 1988 was disposed of by passing an award dated 29th June, 2017. The petitioner claims to have in compliance of such judgment and award deposited five several cheques, all dated 29th November, 2017 with the learned Tribunal on 13th December, 2017. The records, however, reveal that it is the claimants case that the aforesaid cheques were dishonoured on presentation. An application was accordingly filed by the claimants/opposite parties by way of put up before the learned Tribunal seeking for a direction for return of all bounce cheques to the Insurance Company/petitioner, with a further direction to issue fresh cheques in favour of the opposite parties along with up to date interest. From the order dated 9th April, 2018 it would transpire that the return memos were produced before the learned Court which records “payment stopped by drawer”. It would also transpire from the aforesaid order that on that particular date, the learned advocate appearing on behalf of the petitioner (Insurance company) undertook to issue fresh cheques with up to date interest but could not explain why the payment had been stopped by the drawer. Having regard thereto, the learned Court by order dated 9th April, 2018

directed that all the cheques be returned to the petitioner with a direction to issue fresh cheques along with upto date interest in accordance with the order, within 15 days therefrom i.e. by 24th April, 2018.

7. Despite there being no challenge to the above order the same was not complied with. Even when the execution application was filed and notice was served no attempt was made to replace such cheques. Even today, no cheques have been placed before this Court. It is only submitted by the learned advocate representing the petitioner that they were and are ready and willing to replace the cheques. It appears that the learned Judge taking note of the dishonour of cheques and the submissions made by the advocate for the petitioner, had by order dated 9th April, 2018 directed the petitioner to replace the cheques along with upto date interest within 15 days i.e. by 24th April, 2018. The petitioner did not comply with the same. As such the learned Judge by order dated 19th August, 2024 while recording the non-compliance order dated 9th April, 2018 dismissed the application filed by the petitioner with the further direction upon the decree holder/claimants to take appropriate steps for execution of the decree. Admittedly, till today, the awarded amount has not been paid. The petitioner despite holding on to the awarded amount apart

from making an application on 16th October, 2023 for stalling the execution has done nothing. The bank return memo disclosed along with this petition issued by the petitioner's banker records "payment stopped by drawer". The petitioner in the process had been successful in delaying payment of motor accident claim which had been awarded in the year 2017, for more seven years. Even today, the awarded amount has not been paid.

8. There is also no challenge to the order dated 9th April, 2018, as such I do not find any scope to entertain the instant revisional application. At this stage, Mr. Barman, learned advocate would submit that the petitioner is ready and willing to deposit the entire awarded amount along with interest before the Tribunal and prays for stay of execution for a limited period. Having regard thereto, I refrain from awarding any costs.
9. Let the entire amount along with upto date interest as directed by the learned MACC Tribunal and Additional District Judge, 1st Court, Cooch Behar, be depositing with the learned Tribunal within 15 days from date, along with up to date interest in terms of the award dated 29th June, 2017. Interest must be computed upto this day, as till this day the awarded amount is yet to be realised by the claimants/opposite parties.

10. With the above observations and directions the revisional application stands disposed of without any interference with the order.
11. Urgent Photostat certified copy of this order, if applied for, be made available the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)