Item No. 07. & 08 **24.11.2025**

Ct 09

rup

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 95 of 2025

The Oriental Insurance Company Ltd.
Vs
Bandana Biswas & Ors.

With

FMA 1197 of 2025

Bandana Biswas & Ors.
Vs.
The Oriental Insurance Company Ltd. & Anr.

Mrs. Sucharita Paul.
… for the appellant in FMA 95 of 2025 and respondent in FMA 1197 of 2025.

Mr. Muktakesh Das
… for the respondents in F.M.A. 95 of 2025 and appellants in FMA 1197 OF 2025.

Learned advocates for the parties are present.

The appellant in FMA 95 of 2025 the Oriental Insurance Company Ltd. is opposite party No.2 in MACC Case No. 32 of 2020 before Learned Additional District Judge, 3rd Court, Krishnagar, Nadia. The appellant/insurance company being aggrieved by the award dated 8th day of July, 2024 passed the Learned Additional District Judge, 3rd Court, Krishnagar, Nadia in MACC Case No. 32 of 2020 has come up with the instant appeal.

The ground for challenge in this appeal is that the Learned Trial Court did not consider as to whether the vehicle was involved or not and came to a finding about the involvement of the vehicle, although there is delay in lodging the FIR. Another ground on which this award is assailed is that the appellant/insurance company was directed to pay interest @ 9% per annum from the date of filing of the instant case on the said awarded amount till the realisation of payment, in the event the appellant/insurance company fails to pay the awarded sum within two months from the date of award.

In FMA 1197 of 2025 the appellants are the claimants in MACC Case No. 32 of 2020 before Learned Additional District Judge, 3rd Court, Krishnagar, Nadia and is aggrieved by the award dated 8th day of July, 2024 in which the Learned Trial judge exempted the opposite party/insurance company from paying interest from the period between 25.04.2020 and 31.12.2021 due to Covid-19 Pandemic.

Upon hearing the learned advocates and considering the facts and circumstances of the case, this Court is of the view that the delay in lodging of the FIR can be no ground for dismissing the complaint case and by disbelieving the case made out in the FIR. In this regard, the decision of ***Ravi Vs. Badrinarayan & Ors***. reported in ***2011 AIR SCW 1530*** may taken into consideration. In the said decision the Hon'ble Supreme Court observed as follows:-

> *"20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on the ground."*

Thus, upon considering the decision of the Hon'ble Supreme Court and considering the facts of the case, the argument of the appellant/insurance company cannot be sustained. However, with regard to the submission of the learned advocate for the appellant/insurance company that her client was directed to pay @9% of interest in the case of default in making payment within two months, this Court is of the view that as the provision of default interest is neither in the statute nor is there any terms in the contract of insurance which the claimants could produce and further the appellants have preferred an appeal and obtain an order of stay, the direction to pay the default interest cannot be sustained. Thus, the amount directed to be paid on account of default is set aside.

Now, with regard to the submission of the appellant in FMA 1197 of 2025 who are the claimants before the Learned Trial Court, this Court is of the view that Motor Vehicles Claim Legislation being a welfare legislation and the case being instituted during the Covid period and heard also during the said period, the Learned Trial Court ought not to have exempted payment for the period of 25.04.2020 and 31.12.2021. Thus, this order of the Learned Trial Court also cannot be sustained and the same is set aside.

Thus, the claimants/ appellants Bandana Biswas, Udayan Biswas, Bidisha Biswa and Mina Rani Biswas will be entitled to withdraw the principal sum of Rs.52,97,992/- which was awarded by the Learned Trial Court along with interest @ 6% per annum from the date of filing till date of the realisation. As it is submitted by the learned advocate for the appellant that the appellant has already deposited the principal sum along with interest @ 9% per annum from the date of filing till realisation, the appellant/insurance company is permitted to withdraw the excess amount after the respondents/claimants have withdrawn the principal sum of Rs. 52,97,922/- awarded by the

Learned Trial Court along interest @6% per annum from the date of filing till the date of realisation.

With this observation and direction both the appeals being **FMA 95 of 2025** and **FMA 1197 of 2025** stand disposed of.

The Registrar General, High Court, Calcutta is requested to permit both the parties to withdraw the amount in terms of this order upon submission of relevant documents and after compliance of the relevant rules.

With regard to the proportionate amount of payment of compensation to the claimants, the order passed by the Learned Trial Judge shall be applicable.

(Biswaroop Chowdhury, J.)