(2007) 12 CAL CK 0042

In the Calcutta High Court

Case No : F.M.A. No. 1118 of 1997

National Insurance Co. Ltd.	APPELLANT
Vs	
Tapas Kumar Ghosh and Another	RESPONDENT

Date of Decision : 13-12-2007

Acts Referred:
Motor Vehicles Act, 1939 — Section 110CC

Citation : (2008) ACJ 1583

Hon'ble Judges : Tapan Kumar Dutt, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : K.K. Das, for the Appellant;

Final Decision : Allowed

Judgement

Alok Kumar Basu and Tapan Kumar Dutt, JJ.—This appeal challenging the judgment and order of the learned Judge of Motor Accidents Claims Tribunal, Hooghly passed in M.A.C. Case No. 63 of 1987 has been preferred by National Insurance Co. Ltd.

2. At the time of hearing of this appeal, Mr. K.K. Das, appearing for the appellant insurance company has made his submission in support of the appeal but no one has appeared on behalf of the respondents and hence, we are disposing of this appeal after considering the submissions of the learned advocate for the insurance company and after considering the materials placed before us.

3. It appears from the judgment and order of the learned Tribunal that while on disposing of the claim application preferred by the respondents-claimants, the Tribunal directed the insurance company to pay a sum of Rs. 50,000 less interim compensation, if paid along with 6 per cent interest payable from the date of application till payment is made. The learned Tribunal further directed that the above payment is required to be made within 45 days from the date of passing of the order and if the insurance company fails to pay the amount so awarded with interest at the rate of 6 per cent per annum within 45 days from the date of the

order, the insurance company will have to pay interest at the rate of 12 per cent per annum after expiry of 45 days till the date of payment.

4. The appellant insurance company was dissatisfied with the operative part of the order of the learned Tribunal whereby the learned Tribunal imposed interest at 12 per cent per annum as default clause and according to the appellant insurance company this enhancement of interest from 6 per cent per annum to 12 per cent per annum with retrospective effect amounts to imposition of penalty and that was beyond the scope of the Tribunal within the meaning of Section 110-CC of the old Motor Vehicles Act.

5. At the time of making his submission in support of the appeal, Mr. K.K. Das has drawn our attention to a decision of the Hon''ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, and submits that at para 14 of the said judgment the Hon''ble Supreme Court after discussing scope and ambit of Section 110-CC of the Motor Vehicles Act, 1939 held that from a plain reading of the section it appears that Tribunal did not exercise any discretion under that section to impose penalty in the form of default clause through enhancement of interest with retrospective effect and on such interpretation of the section, the Hon''ble Apex Court allowed the appeal of National Insurance Co. Ltd., which was preferred by National Insurance Co. Ltd. being dissatisfied with the order of the Tribunal.

6. Mr. Das submits that in this particular case from the operative portion of the order of the learned Tribunal it is very much clear that the Tribunal originally directed for payment of 6 per cent simple interest on and from the date of filing of the application till the payment is made and the Tribunal''s further direction was that if the amount is not paid within 45 days, then the insurance company will have to pay 12 per cent interest and this default clause clearly indicates that Tribunal directed for payment of enhanced interest with retrospective effect that is from the date of filing of the application till the amount is actually paid and following ratio of decision of the Hon''ble Supreme Court in Keshav Bahadur''s case 2004 ACJ 648 (SC), the Tribunal had no power to impose this penalty on the insurance company. Mr. Das, therefore, submits that having regard to the provision of Section 110-CC of the Act and also having regard to the ratio of decision mentioned above, the order of the learned Tribunal directing for payment of enhanced rate of interest with retrospective effect should be set aside and the appeal preferred by the insurance company should be allowed to that extent.

7. We have stated at the outset that in this appeal we do not get the opportunity of considering submissions of respondents-claimants since nobody appeared for the respondents-claimants and we are to dispose of the appeal after considering the submission of Mr. Das representing the appellant insurance company and also after considering the statutory provision and also the ratio of decision referred to by Mr. Das.

8. From the grounds of appeal and also from the submissions of Mr. Das, it is very much clear that the present appeal, centres around only one question and that was whether the learned Tribunal had the power within the meaning of Section 110-CCof the Motor Vehicles Act, 1939, to impose any penalty on default clause or, in other words, whether the Tribunal could exercise that discretion on the basis of which it can direct for payment of enhanced rate of interest with retrospective effect.

9. We have carefully gone through the decision in National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, , and we find that almost identical question came up for consideration before the Hon''ble Supreme Court and the Hon''ble court after discussing the scope and ambit of Section 110-CCof the Motor Vehicles Act, which empowers the Tribunal to grant interest over the compensation amount, came to the decision that Tribunal does not exercise the power to grant interest at enhanced rate with retrospective effect on the default clause apart from awarding interest in the original order, while assessing the compensation amount.

10. In the present case also after going through the impugned judgment of the learned Tribunal, we find that Tribunal, in fact awarded higher rate of interest with retrospective effect as a default clause and in our view having regard to the position of law settled by the Hon''ble Apex Court in the case of National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, , the Tribunal did not have this power under the Act and naturally the order of the Tribunal directing payment of enhanced rate of interest with retrospective effect on default clause cannot be supported in the eyes of law.

11. Thus, after hearing Mr. Das and after examination of all materials placed before us, we find merit in the present appeal and the same is accordingly allowed, however, without any order as to costs.

12. We find from record that the appellant insurance company deposited 50 per cent of the original compensation amount with the learned Registrar General of this Court on 26.10.1995 and now we direct the insurance company to deposit the balance compensation amount along with interest at the rate of 6 per cent simple on and from the date of filing of the application till the amount is deposited. The insurance company shall also deposit 6 per cent simple interest on 50 per cent of the principal compensation amount which was deposited in this Court on 26.10.1995 from the date of filing of the application up to the date of such deposit.

13. We also grant liberty to respondents-claimants to apply for withdrawal of the entire amount from the office of the learned Registrar General of this Court on their proper identification under proper receipt.

14. Send L.C.R. along with copy of this judgment at once to the learned Tribunal concerned. Urgent xerox certified copy of this order, if applied for, will be given to the learned advocate appearing for appellant on compliance of formalities.

