
(2009) 06 CAL CK 0060
In the Calcutta High Court
Case No : F.M.A.T. 1578 of 2008

Rekha Dutta and Others

APPELLANT

Vs

Ram Avatar Lohia and Another

RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 92A

Citation : (2006) ACJ 2679

Hon'ble Judges : Prasenjit Mandal, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Hemendra Guha Roy and Sujoy Guha Roy, Rajesh Singh, for the Appellant;

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—This appeal is at the instance of the claimants in a proceeding u/s 110A of the Motor Vehicles Act, 1939 and is directed against an award dated 11th August, 2008, passed by the learned Judge, Second Bench, City Civil Court at Calcutta, in M.J.C. No. 44 of 1986 thereby disposing of the said proceeding by awarding a sum of Rs. 1,96,490/- with interest @ 9% p.a. from the date of award till actual payment by the Insurance Company. The Insurance Company was directed to pay the amount within 30 days from the award failing which, it was stipulated in the award, the claimants would be at liberty to put the award into execution through Court and in that event, the decretal amount should carry interest @ 9% p.a. till realisation.

2. Being dissatisfied, the claimants have come up with the present appeal.

3. The only grievance of the appellants in this appeal is that although the proceeding was initiated in the year 1986 and was disposed of in the year 2008, the learned Tribunal below erred in law in not awarding any interest from the date of filing of the application till the disposal of the same.

4. It appears from the award impugned that the learned Tribunal below in the

award impugned recorded that the proceeding was initiated on 28th January, 1986 but there was delay in disposal of the proceedings for not taking any step by the applicants for service of notice on opposite party No. 1 till 21st August, 1998. It is pointed out that the claimants all along took adjournments and the case was dismissed for default on 17th December, 1999 and was restored on 15th April, 2000. It was further indicated that one of the petitioners died and thereafter, on several occasions, adjournments were granted for taking step by the petitioners and in such circumstances, the Tribunal was of the view that the Insurance Company should not be saddled with extra payment in the nature of interest on account of the delaying tactics adopted by the petitioners.

5. Mr. Guha Roy, the learned Counsel appearing on behalf of the appellants, submitted before us that the opposite party No. 1, the owner of the vehicle, deliberately did not appear, as a result, steps were taken on several occasions for effecting service upon him. Mr. Guha Roy submits that the Insurance Company also unnecessarily contested the proceeding by taking false plea that the vehicle was not covered under its insurance although the date of insurance and the number of the policy was indicated in the claim-application. According to Mr. Guha Roy, the proceeding having succeeded, it was the duty of the Tribunal to grant interest for the delayed payment of compensation from the date of filing application till actual deposit of the amount.

6. Mr. Singh, the learned Counsel appearing on the behalf of the Insurance Company, on the other hand, supports the reasons assigned by the Tribunal below and submits that insurance Company should not be penalised by way of interest for the inaction on the part of the appellants and the owner of the vehicle. He, therefore, prays for dismissal of the appeal.

7. Therefore, the only question that arises for determination in this appeal is whether the Tribunal below was justified in refusing to grant interest on the awarded amount for the delayed disposal of the proceedings.

8. After hearing the learned Counsel for the parties and after going through the materials on record, we find that the learned Tribunal below has refused pendente lite interest on the ground that the claimants took several adjournments for the purpose of service of notice upon the owner of the vehicle and in the process, the proceedings were dismissed for default although were restored within four months. According to the Tribunal, for the inaction of the claimants, the Insurance Company should not be penalised by saddling it with interest.

9. In our opinion, the very approach of the Tribunal was based on the wrong notion that interest is payable as a penal measure. In this connection, it will not be out of place to refer to the following observations of the Supreme Court about the object of grant of interest in the case of Alok Shanker Pandey Vs. Union of India (UOI) and Others, :

It may be mentioned that there is misconception about interest. Interest is not a

penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B.

(Emphasis supplied by us)

10. Moreover, the Motor Vehicles Act itself authorises the Tribunal to grant pendente lite interest and what is barred under the Act is grant of pre-litigation interest. Therefore, the Act having authorised the Tribunal to grant pendente lite interest, the Court refused to grant interest on the wrong assumption that grant of interest is a penal measure upon the party.

11. Even the finding of the learned Tribunal on the question of inaction on the part of the claimant is a perverse one. Unlike ordinary litigations where the parties are somehow connected or at least known prior to the initiation of the litigation, in the proceedings under the Act, the owner of the offending vehicle in most of the cases are not known to the claimant and his address is known after taking appropriate information on getting the number of the vehicle. In this case, on receiving such information, requisite was put in for service upon the owner but he having avoided such service, the claimants were asked to take step for fresh service and there was delay in taking step for such fresh service. For taking such step, the correct address of the owner is to be ascertained as in the recorded address, the summons could not be served. The fact that the Tribunal granted such time and that the proceedings were restored itself suggests that sufficient cause was shown for taking adjournment and at the same time, sufficient cause was also shown for restoration of the proceedings. After grant of those adjournments and after restoration of the proceedings being satisfied with the sufficiency of the reason shown, the Tribunal cannot blame the claimant for taking earlier adjournments nor can the Tribunal take into consideration the fact that the proceedings were dismissed in the past and then restored.

12. On the other hand, the Tribunal failed to notice that the real reason for the delayed disposal of the proceedings was the false plea taken by the Insurance Company that the offending vehicle was not covered by the insurance. It appears that in the earlier proceedings u/s 92A of the Old Motor Vehicles Act, the Insurance Company suffered an award but did not challenge such award. After the said proceedings ended in an award against the Insurance Company and the same attained finality, there was no just cause for opposing the subsequent proceedings u/s 110A of the Act by taking the plea that the vehicle was not covered by the insurance. Even the Insurance Company did not endeavour to summon the owner of the vehicle for the purpose of showing the alleged mendacity of the claim of the appellant. In fine, it was the Insurance Company

who by taking false plea contested the proceedings and in the process, it is the Insurance Company who has been benefited for the refusal of grant of interest. The proceedings were filed in the year 1986. The value of the money claimed in the year 1986 is no longer of the same in the year 2009 and the money which ought to have been paid 22 years ago has been retained and the interest on such amount has been enjoyed.

13. We, thus, find substance in the contention of the appellant that in this case, the Tribunal refused to exercise jurisdiction vested in it by law by refusing to grant interest on the awarded sum from the date of the application till actual payment at the rate Nationalised Banks used to grant interest on such amount if invested for a period of one year or more.

14. We, consequently, allow this appeal by modifying the award to this extent that in addition to the awarded amount, the appellants would be entitled to get interest at the rate of 12% per annum from the date of filing the application till December 31, 1999 and at the rate of 8% per annum from January 1, 2000 till actual payment. Let the balance amount be paid within a month from today.

15. In the facts and circumstances, there will be, however, no order as to costs.

Bhaskar Bhattacharya, J.

16. I agree.