

New India Assurance Co. Ltd. Vs Balai Majhi and Another

Court: Calcutta High Court

Date of Decision: Dec. 15, 2009

Citation: (2011) ACJ 31 : (2011) 1 TAC 984

Hon'ble Judges: Subhro Kamal Mukherjee, J; Abdul Ghani, J

Bench: Division Bench

Advocate: Soumendra Nath Ganguly and Kinkar Pandit, for the Appellant; Amit Ranjan Roy, for the Respondent

Final Decision: Dismissed

Judgement

Subhro Kamal Mukherjee and Abdul Ghani, JJ.

When this application for stay came up for hearing, Mr. Amit Ranjan Roy, learned

advocate appearing for the claimants-Respondents, submits that the appeal itself is not maintainable inasmuch as it has been clearly recorded in the

impugned award that the insurance company did not repudiate the contention of the claimant.

2. Mr. Roy in his turn relies upon a decision in the case of Bank of Bihar Ltd. Vs. Mahabir Lal and Others,

3. Supreme Court of India in Bank of Bihar Ltd. Vs. Mahabir Lal and Others, , held that where a statement appearing in the judgment of a court

that a particular thing happened or did not happen before it, it ought not ordinarily be permitted to be challenged by a party unless both the parties

to the litigation agree that the statement is wrong, or the court itself admits that the statement is erroneous. The remedy of a party aggrieved is by

way of review.

4. Mr. Soumendra Nath Ganguly, learned advocate appearing for the Appellant, however, strenuously argues that Bank of Bihar Ltd. Vs. Mahabir

Lal and Others, , is distinguishable. He submits that there are sufficient materials to show that the insurance company strongly contested the claim

of the claimant before the Motor Accidents Claims Tribunal.

5. Mr. Ganguly, however, relies upon a decision of the Apex Court of India in the case of Jagdish Singh Vs. Madhuri Devi,

6. The Apex Court of India in Jagdish Singh Vs. Madhuri Devi, , held that it is no doubt true that the High Court was exercising power as the first

appellate court and hence it was open to the court to enter into not only questions of law, but questions of fact as well. It is settled law that an

appeal is a continuation of suit. An appeal, thus, is a rehearing of the main matter and the appellate court can reappraise, reappraise and review

the entire evidence, oral as well as documentary, and can come to its own conclusion.

7. We fail to understand how Jagdish Singh Vs. Madhuri Devi, , is applicable in the case in hand. The power of the first appeal court is well-

known, but in this case the question is whether the appeal itself is maintainable. In other words, whether order was passed on concession.

8. In the judgment the learned Member of the Motor Accidents Claims Tribunal categorically recorded that the insurance company did not

repudiate the contention of the claimant. On the basis of such concession the award has been passed.

9. It was for the insurance company to approach the Tribunal drawing attention that such contention was never made and it was wrongly recorded

in the judgment, but it is not open to the insurance company to agitate in the appellate court that there was no concession in the Tribunal below.

10. We are of the considered opinion that as the award was passed recording that the insurance company did not repudiate the contentions of the

claimant before the Motor Accidents Claims Tribunal, the appeal is not maintainable.

11. We are informed that already the entire awarded sum has been deposited with the learned Registrar General. The learned Registrar General is

directed to release the payment in favor of claimants if an application is made for such payment, as expeditiously as possible.

12. On the prayer of Mr. Ganguly, the learned advocate appearing for the Appellant we make it clear that the insurance company will be entitled

to take steps in accordance with law.

13. The application for stay stands rejected.

14. We also dismiss the appeal as not maintainable.

15. We, however, direct the parties to bear their respective costs in this appeal.

16. Urgent xerox certified copy of the order, if applied for, same be supplied to the parties expeditiously.