

(1998) 07 CAL CK 0041

Calcutta High Court

Case No: C.O. No. 2284 of 1997

Anima Paul

APPELLANT

Vs

National Insurance Co.
Ltd.

RESPONDENT

Date of Decision: July 14, 1998

Acts Referred:

- Constitution of India, 1950 - Article 227
- Motor Vehicles Act, 1988 - Section 140, 174

Citation: (1998) 2 ACC 374 : (1999) ACJ 1495

Hon'ble Judges: Bhaskar Bhattacharya, J

Bench: Single Bench

Advocate: Tapan Kumar Chakraborty and Tapan Kumar Roy, for the Appellant;

Final Decision: Dismissed

Judgement

B. Bhattacharya, J.

Let affidavit of service on behalf of the petitioner filed in court today be kept with the records.

2. This application under Article 227 of the Constitution of India is at the instance of a claimant in a proceeding under Motor Vehicles Act and is directed against Order No. 54 dated 23.9.1996 passed by the learned Judge, Motor Accidents Claims Tribunal pertaining to M.A.C. Case No. 66 of 1995 (35 of 1990 and 469 of 1989).

3. It appears that the claim of compensation filed by the petitioner was allowed by the learned Tribunal by its judgment dated 11.1.1996. The ordering portion is quoted hereunder:

The O.P. No. 3 New India Assurance Co. Ltd., 173 G.T. Road, P.O. Asansol, Distt. Burdwan, insurer for the Ambassador car No. WBJ 2897 and O.P. No. 4 National

Insurance Co. Ltd., P.O. Barakar, Distt. Burdwan (insurer of truck No. WMH 4393) are hereby directed, for and on behalf of O.P. Nos. 1 and 2, to pay off the respective equal liability awarded amount, i.e., Rs. 40,500. (Rupees forty thousand five hundred only), subject to deduction of no fault liability u/s 140 of Motor Vehicles Act, if already paid in the above manner or in any other manner as the case may be to the claimant mother as above by A/c payee cheque after proper verification of identity within a period of two months hence, failing which, they shall be liable to pay simple interest at the rate of 12 per cent per annum on the awarded amount from the date of filing of the claim application, till the date of actual payment.

Subsequently, the petitioner filed an application u/s 174 of the Motor Vehicles Act, 1988 thereby claiming interest amounting to Rs. 28,710 on the ground that the insurance company has deposited the cheque before the Tribunal on 9.4.1996 and as such in view of the order dated 11.1.1996 they are liable to pay interest at the rate of 12 per cent per annum from the date of filing of the claim application.

4. By the order impugned the Presiding Judge of the Motor Accidents Claims Tribunal rejected such application. It appears from the order impugned that the learned Judge has held that 3-4 days delay was very negligible and as such there was no merit in the matter.

5. In view of the fact that no appeal was preferred by the insurance company against the award dated 11.1.1996, the same has attained finality. In the said award there is a specific clause that in the event the amount is not paid within two months, the insurance company was liable to pay interest from the date of filing of the claim petition. It appears that the cheque was deposited in the Tribunal about one month after a period of two months from the date of passing of the order. Thus the original award having attained finality the learned Tribunal hearing an application u/s 174 of the Motor Vehicles Act has no jurisdiction to correct or modify the award. The role of the Tribunal while entertaining an application u/s 174 of the aforesaid Act was that of an Executing Court. Thus, in my opinion, the learned Tribunal below acted illegally and with material irregularity in rejecting the prayer for claim of interest advanced by the petitioner for non-payment of amount within the time stipulated in the original award.

6. The order impugned thus is set aside. The learned Tribunal below is directed to pass necessary order for direction upon the insurance company for making payment of interest at the rate of 12 per cent per annum from the date of filing of the claim application till the date of payment of such amount. Such order must be passed within a month from the date of communication of this order.

7. The revisional application is thus allowed. There will be no order as to costs.

8. If certified xerox copy of this order is applied for, Department will supply the same within a week from the date of application.