

**(2009) 07 CAL CK 0043**

**In the Calcutta High Court**

**Case No :** F.M.A.T. No. 4221 of 2004 and F.M.A. No. 208 of 2005

Bhikham Yadav

APPELLANT

Vs

National Insurance Co. Ltd. and Others

RESPONDENT

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**Date of Decision :** 13-07-2009

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 163A, 170

**Citation :** (2010) ACJ 2255

**Hon'ble Judges :** Prasenjit Mandal, J;B. Bhattacharya, J

**Bench :** Division Bench

**Advocate :** Krishanu Banik, for the Appellant; Kamal Krishna Das and Rajesh Singh, for the Respondent

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## **Judgement**

B. Bhattacharya and Prasenjit Mandal, JJ.—This appeal is at the instance of the claimant in a proceeding u/s 163-A of the Motor Vehicles Act and is directed against an award dated 31.8.2004 passed by learned Judge, Motor Accidents Claims Tribunal, Alipore, 24-Parganas (South) in M.A.C. Case No. 555 of 2000 thereby dismissing the said application.

2. Being dissatisfied, the claimant has come up with the present appeal.

3. There is no dispute about the involvement of the victim in an accident where apart from the vehicle which was being driven by the victim, two other vehicles were involved. It appears that there was head to head collision between the vehicle driven by the victim and another truck insured by United India Insurance Co. Ltd. and when such accident occurred, another vehicle insured by National Insurance Co. Ltd., which was following the vehicle driven by the victim, dashed from behind.

4. According to the claimant, he sustained disability to the extent of 35 per cent, as assessed by a doctor, who also deposed in the proceeding. It further appears that the victim was a driver of Belda Transport Corporation and due to injury suffered by him, he was terminated from his service as he was not in a position

to perform his duty as a driver any further.

5. Both the insurance companies contested the proceeding and according to them, it was due to negligence on the part of the victim himself that the accident occurred, as a result, the liability should not fall upon the insurance companies.

6. Learned Tribunal below on consideration of the F.I.R. and the charge-sheet came to the conclusion that the victim himself was responsible for the accident, as would appear from the fact that he was the only driver who was charge-sheeted.

7. According to the learned Tribunal below, as there was contributory negligence on the part of the victim, he was not entitled to get any compensation and thus, dismissed the application.

8. After hearing Mr. Banik, the learned advocate appearing on behalf of the appellant, Mr. Das, learned advocate appearing on behalf of the respondent No. 2, United India Insurance Co. Ltd. and Mr. Singh, the learned advocate appearing on behalf of the respondent No. 1, National Insurance Co. Ltd. we are of the view that the learned Tribunal below acted perversely in rejecting the application by totally overlooking the fact that the proceeding was one u/s 163-A of the Motor Vehicles Act and thus, in such a proceeding, rashness and negligence of the victim was immaterial. Once it was established from evidence that due to the accident involving the vehicles insured by the two insurance companies, the victim was injured, it was the duty of the learned Tribunal below to enter into the merit of the matter for the purpose of assessing the amount of compensation by taking aid of the Second Schedule to the Motor Vehicles Act.

9. In this case, it has been established from the evidence of the employer of the victim that he was a driver of Belda Transport Corporation and used to get Rs. 3,000 a month as salary as a driver. It further appears from evidence that the victim was aged 32 years at the time of accident. Although both Mr. Das and Mr. Singh strenuously contended before us that we should not accept the assessment of disability made by PW 2, the doctor, who assessed such disability, we are not at all impressed by such submission. It appears that in evidence he specifically stated that on the basis of the clinical examination done by him, he assessed the said disability. The correctness of such assessment has been corroborated from the fact that the victim has been terminated from the service, as he is unable to perform his duty as a driver. Moreover, both the insurance companies took leave u/s 170 of the Motor Vehicles Act, but in spite of that, those two companies never endeavoured to get the victim examined by any independent doctor for the purpose of falsifying the assertion of the victim.

10. In such circumstances, we do not find any reason to disbelieve the assessment of PW 2.

11. Therefore, on the basis of the income of Rs. 3,000 per month and on the basis of the multiplier of 17, as prescribed in the Second Schedule to the Motor

Vehicles Act, by treating the disablement to be 35 per cent, the amount of compensation comes to Rs. 2,14,200. In addition to the said amount, a further sum of Rs. 5,000 should be paid for pain and suffering, as provided in the Second Schedule to the Motor Vehicles Act.

12. Appellant should also be entitled to get interest at the rate of 8 per cent per annum from the date of filing of the application till actual deposit of the amount.

13. At this stage, both Mr. Das and Mr. Singh pointed out that the claim of the victim was limited to Rs. 2,00,000 and, therefore, we should not pass any award in excess of that amount.

14. In view of the decision of the Supreme Court of India in case of Nagappa Vs. Gurudayal Singh and Others, , we are not at all impressed by such submission.

15. As pointed out therein, if a court or Tribunal assesses any amount as just amount of compensation, the said amount should not be reduced merely because the claimant restricted his claim at a figure which is less than that amount.

16. We, therefore, set aside the award impugned and award a sum of Rs. 2,19,200 with interest at the rate of 8 per cent per annum from the date of filing of the application (26.9.2000) till the actual deposit.

17. Since two vehicles were involved, we direct the two insurance companies to bear the amount equally between themselves. Insurance companies are directed to pay their dues in accordance with the award within a month from today before the learned Tribunal below.

18. With the aforesaid observation, the appeal is, thus, disposed of.

19. Let the lower court records be immediately sent down to the learned Tribunal below.

20. Xerox certified copy of this order, if applied for, be given to the learned Counsel appearing for the parties within a week from the date of filing of the application.