

(1998) 03 CAL CK 0053
In the Calcutta High Court
Case No : C.O. No. 587 of 1998

Budharu Roy and Another

APPELLANT

Vs

National Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 25-03-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (1998) ACJ 846

Hon'ble Judges : S. Narayan, J

Bench : Single Bench

Advocate : Md. Saidur Rahaman, for the Appellant; Rajesh Singh, for the Respondent

Final Decision : Allowed

Judgement

S. Narayan, J.—Consequent upon the death of the petitioners' son Buiya Roy in a motor accident caused by the maxi taxi No. WGV 2556, a claim of compensation was lodged before the Motor Accidents Claims Tribunal, 2nd Court, Jalpaiguri, which was numbered as MAC No. 285 of 1996. Pending final disposal of the claim there was also a petition filed for payment of compensation on the principle of no fault liability that is, u/s 140 of the Motor Vehicles Act, 1988.

2. While considering the prayer as such the learned Tribunal by the impugned order dated 7.11.1997 asked the parties to adduce evidence with regard to their contentions in controversy. Suffice it to give extract of the impugned order which is as follows:

Though I have not meticulously gone through the decisions of the hon'ble High Court and the Supreme Court cited on behalf of the applicants since they are not placed before me this day, but I am of the view that this argument can be heard at length at the time of hearing argument of the claim application and that the applicants would not be prejudiced in any way if the O.P.'s claim is allowed since the applicants would get opportunity to cross-examine the witness on that score.

On the other hand, refusal of O.P.'s prayer may prejudice it.

3. On the very face of the impugned order, therefore, it appears that the Tribunal proposed to enter into the merits of the case, but the provisions with regard to no fault claim as contained u/s 140 of the aforesaid Act did not purport or make any provision to go for such a detailed enquiry or investigation.

4. The relevant provisions as contained in Sub-sections (3) and (4) of Section 140 of the said Act did prescribe that the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

5. The provisions in law went to the extent of even extending the benefit of law that a claim as such shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made.

6. In view of the legal provisions as indicated in the preceding para, I do not think that the Tribunal proceeded on a proper line of procedure as laid down in the aforesaid Act itself. That being as such, I am compelled to intervene in this matter and set aside the impugned order while requesting the learned Tribunal to dispose of the pending application for claim of no fault basis in accordance with law, more particularly as contained u/s 140 of the Motor Vehicles Act, 1988.

7. Accordingly, this revisional application succeeds. There will be no order as to costs.

8. The learned Tribunal is, however, requested to dispose of the pending application with utmost expedition.

9. Let certified copy of the above order, if applied for, be issued at the earliest.