

(2008) 08 CAL CK 0056

In the Calcutta High Court

Case No : F.M.A. No. 865 of 2004 with C.A.N. No. 4742 of 2008

Kanai Manna

APPELLANT

Vs

United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 01-08-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2009) ACJ 544

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Krishanu Banik, for the Appellant; Parimal Kr. Pahari and Kamal Krishna Das, for the Respondent

Judgement

Bhaskar Bhattacharya and Rudrendra Nath Banerjee, JJ.—Instead of disposal of the application, we propose to hear out the appeal itself by treating it as on day"s list.

2. This appeal is at the instance of a claimant and is directed against an award dated 16.7.2004, passed by the Addl. District Judge, Midnapore (West) and Motor Accidents Claims Tribunal in M.A.C. Case No. 467 of 2001 thereby disposing of an application u/s 163-A of Motor Vehicles Act by directing the insurance companies to pay a sum of Rs. 1,38,000 to the claimant. In this case, two vehicles were involved and two different insurance companies were held to be jointly and severally liable for the amount.

3. Being dissatisfied, the claimant has come up with the present appeal. At the very outset, both Mr. Pahari and Mr. Das, the learned advocates appearing on behalf of the two different insurance companies, respondents, fairly concede that their clients did not prefer any appeal against the award impugned nor have they filed any cross-objection and in fact, the award has been fully satisfied. Nevertheless, they contend that in this appeal as respondents, they are entitled to contend that there should not be enhancement of the awarded amount because the proceeding u/s 163-A of the Act was not maintainable on the basis

of admission of the appellant that the victim had monthly income of Rs. 4,500.

4. After hearing learned Counsel for the parties and after going through the materials on record, we find that the applicant in the application u/s 163-A of the Act asserted that the victim had monthly income of Rs. 4,500. It is now settled law that a claim application u/s 163-A of the Act can be maintained only at the instance of the victim whose yearly income did not exceed Rs. 40,000. Therefore, in the present case, the Tribunal ought to have dismissed the application as not maintainable on the basis of the averments made by the applicant in the claim application.

5. But, as pointed out earlier, the insurance companies not having preferred any appeal or cross-objection and the award having already been satisfied without any objection from the insurance companies, there is no scope of setting aside the proceedings in this appeal preferred by the claimant. We, thus, find that there is also no scope of enhancement of the amount or grant of interest on the amount when we are satisfied that proceeding u/s 163-A of the Act was not maintainable.

6. Mr. Banik, the learned advocate appearing on behalf of the appellant, at this stage, submitted before us that if we hold that the application u/s 163-A of the Act is not maintainable in view of excess income of the victim, we should give liberty to his client to proceed u/s 166 of the Act.

7. We fully appreciate the aforesaid contention of Mr. Banik. We, however, can permit Mr. Banik's client to initiate the proceeding u/s 166 of the Act provided he returns the entire amount he has received from the insurance companies in execution of the award with interest at the rate of 8 per cent per annum from the date of receipt of such amount till actual refund of the amount to the insurance companies. On returning of such amount, if the appellant decides to approach the Tribunal u/s 166 of the Act and endeavours to prove the negligence of offending vehicle, he is free to do so in accordance with law.

8. The award impugned is, thus, affirmed subject to the aforesaid observation. The appeal is, thus, disposed of accordingly.

9. The appellant is at liberty to take back the documents that he has filed in the proceeding.

10. In view of dismissal of the appeal itself, connected application being C.A.N. No. 4742 of 2008 has become infructuous and the same is disposed of accordingly.

11. Xerox certified copies of this order, if applied for, be given to the parties within a week from the date of making of such application on compliance with requisite formalities.