**(2002) 01 GUJ CK 0009**

**In the Gujarat High Court**

**Case No :** F.A. No. 1073 of 2001

Oriental Insurance Co. Ltd. APPELLANT

Vs

Shantilal Gopalji Mota and Others RESPONDENT

**Date of Decision :** 23-01-2002

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 140, 163A, 166, 168, 173

**Citation :** (2003) ACJ 2138

**Hon'ble Judges :** Y.B. Bhatt, J;M.H. Kadri, J

**Bench :** Division Bench

**Advocate :** Shalin N. Mehta, for the Appellant; Sandeep N. Bhatt, for the Respondent

**Final Decision :** Allowed

## Judgement

Y.B. Bhatt, J.—On a joint request of learned Counsel, this appeal is taken up for final hearing today.

2. This is an appeal u/s 173 of the Motor Vehicles Act, at the instance of the insurance company, challenging the judgment and award passed by the Motor Accidents Claims Tribunal, Kutch u/s 163-A of the said Act.

3. It is pertinent to note that the said award has been passed by order below Exh. 17, whereas the main claim petition u/s 166 of the Act being Motor Accident Claim Petition No. 1507 of 1999 is yet pending.

4. Learned counsel for the appellant contends that the respondents have erred in law in treating the said claim petition u/s 163-A as a claim of an interim nature and has dealt with it in a manner similar to a claim u/s 140 of the said Act. It was contended that on account of this approach on the part of the Tribunal, the appellant insurance company had no opportunity of leading appropriate evidence and/or meeting the contentions of the original claimants in these proceedings u/s 163-A. According to the learned Counsel for the appellant, the law as laid down by the Supreme Court does not permit the claimants to pursue a claim u/s 163-A

of the Act, whether by way of an interim application or even by way of a final decision as long as the main claim u/s 166 of the said Act is pending adjudication. In other words, learned Counsel for the appellant contends that the claims filed u/s 163-A and Section 166 of the said Act are in the nature of alternative remedies, and only one of such remedies can be pursued, whereas the two remedies cannot be pursued simultaneously or in succession. We are obliged to accept this contention on the part of the learned Counsel for the appellant in view of the clear decision of the Apex Court in the case of Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala 2001 ACJ 827 (SC). It is, therefore, obvious that on the facts of the case, since the main claim petition u/s 166 of the Act is pending, the Tribunal had no jurisdiction either to entertain or to decide a claim u/s 163-A of the said Act. In the premises aforesaid, the impugned award u/s 163-A is required to be quashed and set aside. We hold and direct accordingly.

5. On the facts of the case, we are informed that an amount of Rs. 25,000 which had been deposited by the appellant with the Registry has been directed to be transmitted to the Tribunal. Thus, this amount is already with the Tribunal. The appellant shall make a further deposit of Rs. 25,000 with the Tribunal so as to make up an amount of Rs. 50,000.

6. We are mindful of the fact that the main claim u/s 166 is yet pending adjudication and we are also mindful of the fact that in such a claim petition, it is always open to the claimants to prefer an application u/s 140 of the said Act.

7. In the premises aforesaid, and on the facts of the case, we hold by consensus between the learned Counsel for the parties that it would be open to the respondents-original claimants to prefer an application u/s 140 in the claim petition, now pending u/s 166 of the Act.

8. We are also conscious that in case of a fatality from which the main claim petition arose, the maximum the Tribunal could award u/s 140 would be Rs. 50,000. This sum of Rs. 50,000 has, by virtue of the present judgment and order, been placed at the disposal of the Tribunal.

9. This amount of Rs. 50,000 may be withdrawn by the original claimants after filing and obtaining an order upon the application u/s 140 of the said Act, in the main claim petition u/s 166 of the said Act.

10. However, this right conferred upon the original claimants to withdraw the amount of Rs. 50,000 shall be subject to the claimants filing an undertaking before the Tribunal to the effect that the claimants shall pursue the main claim petition u/s 166 of the Act, and obtain an adjudication thereon, on merits and in accordance with law, and that they shall not permit this application to be withdrawn or dismissed for default, or be disposed of in any other manner, and that the amount of Rs. 50,000 withdrawn by the claimants shall be adjusted in the final award u/s 168 of the said Act. If such an undertaking is not filed along with an application u/s 140 of the said Act, it shall be open to the appellant

 

insurance company to apply to the Claims Tribunal for restitution/refund of the amount of Rs. 50,000.

11. This appeal is, therefore, allowed to the aforesaid extent with no order as to costs. Decree accordingly.

12. In case the main claim petition u/s 166 of the Act has been withdrawn by the claimants, it shall be open to them to apply to the Tribunal for revival. Such an application, if filed by the claimants, shall not be objected to by the insurance company, as per the statement made by learned Counsel for the insurance company. Such an application, if made, shall normally be granted by the Tribunal.

13. It requires to be noted that on the facts and circumstances noted hereinabove and in view of the directions consequently issued, it would be appropriate for the cc to expedite the hearing of the main claim petition u/s 166 of the said Act, and to dispose of the same as early as possible in consonance with the date of its filing and the workload before the Tribunal.