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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 1588 of 2008
with
IA No. CAN 2 of 2008 (CAN 6741 of 2008)

The New India Assurance Company Ltd.
Vs.
Surya Kumar Naskar & Ors.

Mr. Saibalendu Bhowmik
... For the appellant/Insurance Company

Affidavit of service filed in Court today is taken on record.

In spite of service, none appears on behalf of the respondent/claimant and other respondents even on repeated calls. This appeal is pending since 2008.

Learned advocate appearing on behalf of the appellant/Insurance Company submitted that the appeal may be disposed of due to long pendency.

In such circumstances, the appeal is taken up for disposal on merit.

This appeal is directed against the judgment and award dated 20th December, 2007 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Alipore, South 24-Parganas, in connection with MAC Case No.54 of 2007 under Section 163A of the Motor Vehicles Act, 1988 whereby the learned Tribunal awarded compensation to the tune of Rs.4,12,500/-.

The claim petition was filed on account of death of one Tapan Naskar who was travelling by a vehicle, bearing registration no.WB-19A/5733 (TATA-407), in a motor accident happened on 12th April, 2002 at about 7.10 hours. Suddenly, one Lorry, bearing registration no.WB-03A/6010, collided with the vehicle TATA-407 and as a result, Tapan Naskar sustained injury and ultimately succumbed to his injuries. At the relevant point of time, Tapan Naskar was a driver having income of Rs.5,500/- per month and he was aged about 34 years. After the accident, Jogacha Police Station Case No.40 dated 12th April, 2002 under Sections 279/338/427/304A of the Indian Penal Code was started.

Owner did not contest the claim petition but the New India Assurance Company Limited contested the case by filing written objection denying all material averments of the claim petition contending, inter alia, that the claimant is not entitled to any compensation, as prayed for.

To prove the case, the claimant Surya Kumar Naskar, being the father of the victim, examined himself as PW-1. He testified about the accident by the rash driving of the lorry, bearing registration no.WB-03A/6010. He further asserted the income of his son as Rs.3,500/- per month with overtime of Rs.2,000/-. In cross-examination, he also stated about the income of his son as Rs.3,500/- per month. In course of his evidence, a good number of documents were admitted in evidence and marked as exhibits, including certified copy of First Information Report, charge sheet, post-mortem report etc.

After analyzing the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.4,12,500/- considering the monthly income of Rs.3,000/-.

Being aggrieved by and dissatisfied with the said judgment, the New India Assurance Company Limited preferred this appeal on the ground of maintainability of the claim petition under Section 163A of the Motor Vehicles Act, 1988.

Mr. Saibalendu Bhowmik, learned advocate, appearing on behalf of the appellant/Insurance Company has submitted that according to the claim petition together with the evidence, it appears that at the time of death, Tapan Naskar used to earn Rs.5,500/- per month including overtime etc. and thereby monthly income of the deceased was more than Rs.40,000/-. According to him, the application under Section 163A of the Motor Vehicles Act, 1988 is not maintainable in case where deceased used to earn more than Rs.40,000/- at the time of accidental death.

In support of his contention, Mr. Bhowmik has relied on a case of **Deepal Girishbhai Soni & Ors. v. United India Assurance Co. Ltd., Baroda** reported in

(2004) 5 SCC 385 wherein the Hon'ble Apex Court observed that the proceeding under Section 163A being a social security provision, providing for a distinct scheme, only those whose annual income is up to Rs.40,000/- can take the benefit thereof whereas Sections 140 and 166 cater to all sections of society.

That apart, Mr. Bhowmik also relied on a case of **Kanai Manna v. United India Insurance Co. Ltd. & Ors.** reported in **2009 ACJ 544** whereby the Hon'ble Division Bench of this Court also opined as follows:-

> "... It is now settled law that a claim application under section 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."

Mr. Bhowmik has further referred to the principle laid down in a case of **Shampa Mallick & Ors. v. The Divisional Manager, United India Insurance Co. Ltd. & Ors.** reported in **(2013) 3 WBLR (Cal) 276** wherein also the Hon'ble Division Bench of this Court held as follows:-

> "**14.** We do not want to joint any issue of such proposition of law enunciated by the Hon'ble Division Bench of this Court in the said decision but applicability of the said decision in the instant case is doubtful as here is the case where we find that the claimants themselves not only claimed in the claim petition that the income of the victim was

> Rs.54,000/- per annum but also they stated in their evidence that the income of the victim was Rs.54,000/- per annum i.e. Rs.3,000/- on account of salary per month and Rs.50/- on account of daily food allowance. In the light of such pleadings and the evidence of the claimants, we cannot come to the conclusion that the income of the deceased was lesser than Rs.40,000/- per annum.
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> **15.** As such, we hold that the decision which was cited by Mr. Rahaman cannot help his client in any manner whatsoever. As such, we hold that the application under Section 163A of the Motor Vehicles Act is not maintainable at the instance of such claimants."

Here in this case claim petition was filed under Section 163A of the Motor Vehicles Act, 1988 but annual income of the deceased at the time of death has been stated in the claim petition as Rs.5,500/- and thereby annual income would be more than Rs.40,000/-. Such income has also been substantiated by the claimant herself in her evidence. Therefore, in terms of the decision of **Deepal Girishbhai Soni** (supra) followed by **Shampa Mallick** (supra), I do not find any reason to come to any contrary view.

In the aforesaid view of the matter, I find that the claim petition under Section 163A of the Motor Vehicles Act, 1988 is not maintainable.

Thus, being the position, the judgment passed by the learned Tribunal in with MAC Case No.54 of 2007 stands set aside.

However, the claimant is at liberty to proceed under Section 166 of the Motor Vehicles Act, 1988.

In case of filing any application under Section 166 of the Motor Vehicles Act, 1988 by the claimant, the learned Tribunal will decide the claim petition on its own merit without being influenced by the order of this Court.

It is reported by the learned advocate appearing on behalf of the appellant/New India Assurance Company Limited that the Insurance Company has already deposited the entire awarded amount with the office of the learned Registrar General of this Court.

As such, the appellant/New India Assurance Company Limited is at liberty to withdraw the entire amount with accrued interest from the office of the learned Registrar General of this Court.

In the result, the appeal, being FMA 1588 of 2008, succeeds and stands disposed of along with the application, being CAN 2 of 2008 (CAN 6741 of 2008).

All pending applications, if there be any, also stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)