

N.22Sl
151/CL
07.01.25
Sl-43
Ct.33
(S.R.)

FMA 909 of 2024
Radharani Bagdi & Ors.
v.
Dilip Bagdi & Anr.

Mr. Subrata Bhattacharyya
... for the appellants/claimants.

Mr. Sayak Majumder
... for the respondent no.2/insurance company.

The learned advocate representing the appellants/claimants submitted that due to an inadvertent error the application under Section 166 of the MV Act was prayed to be converted into an application under Section 164 of the MV Act, which was allowed by the learned Tribunal vide order dated 23rd December, 2022. By vide order dated 19th March, 2024 the MCA Case No.284 of 2021 filed under Section 164 of the MV Act was dismissed on the ground of non-maintainability.

The impugned order as aforesaid, *inter alia*, stated as follows: -

"The issue no.1 is taken up for hearing. From the case record it appears that the suit was filed on 20.11.21 u/s 166 of M.V. Act. Subsequently the petitioners/claimants filed an application U/O 6 Rule 17 CPC on 23.12.22 with a prayer for amendment of the claim petition by incorporation of Section 164 M.V. Act in lieu of 166 of MV Act and that petition was allowed and the petitioners filed amended plaint after amendment. From the recital of the claim petition it appears that the incident took place on 03.08.21 whereas Section 164 of MVG Act came into force with effect from 01.04.22. On the date of accident Section 164 of M.V. Act had no its existence. As Section 164 of MV Act had not in existence on the date of incident so the instant claim case cannot be entertained u/s 164 of M.V. Act.

The petition filed by the Ld. Advocate for O.P.

insurance company as to non-maintainability of the instant claim case is proper and appropriate. In view of the aforesaid discussion and observation this Court reached at the conclusion that the instant claim case is not maintainable on the point of law. Hence, the instant claim case is not maintainable and the issue no.1 is decided against the claimants.”

The learned Tribunal did consider the evidence on record, however, did not finally dispose of the aforesaid case on merits and stuck to the point of maintainability raised by the learned advocate representing the insurance company therein.

The learned advocate representing the respondents/insurance company conceded to the submission of the learned advocate representing the appellants/claimants that the application filed under Section 164 of the MV Act upon amendment should not have been allowed and sought for remand of the entire case records to be adjudicated on its merits.

Considering the application for compensation to be filed under Section 166 of the MV Act, the learned Tribunal is to decide the MAC Case No.284 of 2021 based on the evidence already placed on record both oral and documentary.

Copy of this order be communicated to the learned Tribunal for necessary action.

Accordingly, the FMA 909 of 2024 is disposed of.

(Ananya Bandyopadhyay, J.)