

(2010) 02 CAL CK 0016

Calcutta High Court

Case No: F.M.A.T. No. 1759 of 2005 and C.A.N. No's. 1047 and 1049 of 2010

Khokan alias Prodeep Saha

APPELLANT

Vs

New India Assurance Co. Ltd.
and Others

RESPONDENT

Date of Decision: Feb. 16, 2010

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A, 167

Citation: (2011) 2 TAC 438

Hon'ble Judges: Subhro Kamal Mukherjee, J; Abdul Ghani, J

Bench: Division Bench

Advocate: Santosh Kumar Das, for the Appellant; Parimal Kumar Pahari, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.

These applications are for the addition of the owners of the offending vehicles as Respondents in this appeal and for condonation of delay.

2. The owners of the offending vehicle did not contest the claim case in the Court below.

3. Therefore, on the prayer of Mr. Santosh Kumar Das, learned Advocate appearing on behalf of the Appellant and at the risk of the Appellant, service of notice of this applications on the proposed Respondents is dispensed with.

4. Mr. Parimal Kumar Pahari, learned Advocate appears for the Respondent No. 1 and Mr. Rajesh Singh, learned Advocate appears for the Respondent No. 2.

5. After hearing Mr. Santosh Kumar Das, learned Advocate appearing in support of the application for addition of party and for condonation of delay, Mr. Parimal Kumar Pahari, learned Advocate appearing on behalf of the Respondent No. 1 and Mr. Rajesh Singh, learned Advocate appearing on behalf of the Appellant, the names

of the owners of the offending vehicles were omitted from the cause title of the memorandum of appeal.

6. The owners of the offending vehicles are added as Respondent No. 3 and 4 in this appeal upon condonation of delay.

7. Therefore, both the applications, being C.A.N. 1047 of 2009 and C.A.N. 1049 of 2009, are disposed off.

8. We make no order as to costs.

9. The office is directed to carry out necessary amendment in the cause title of the memorandum of appeal.

10. Although, the matter is appearing under the heading "for orders", by consent of the parties, we take up the hearing of the appeal itself upon dispensation of all formalities.

11. Mr. Parimal Kumar Pahari, learned Advocate appears for the Respondent No. 1 and accepts notice of appeal on behalf of the said Respondent No. 1.

12. Mr. Rajesh Singh, learned Advocate appears for the Respondent No. 2 and accepts notice of appeal on behalf of the Respondent No. 2.

13. Therefore, formal service of notice of appeal on the Respondent Nos. 1 and 2 is dispensed with.

14. The owners, who have been added as Respondent No. 3 and 4 in the memorandum of appeal, did not contest the claim case in the Court below.

15. Therefore, formal service of notice of appeal on those Respondents is, also, dispensed with.

16. The Motor Accident Claims Tribunal dismissed the application for compensation filed u/s 163-A of the Motor Vehicles Act, 1988, on the ground that the claimant, being the driver of one of the offending vehicles, he ought to have approached the Workmen's Compensation Tribunal; his remedy was not available before the Motor Accident Claims Tribunal.

17. Section 167 of the Motor Vehicles Act, 1988 runs as below:

Notwithstanding anything contained in the Workmen's Compensation Act, 1923, where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923 (8 of 1923), the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

18. When claim arises under the Motor Vehicles Act, 1988 and under Workmen's Compensation Act, 1923, the person entitled to claim compensation may claim

compensation under either of those Acts and not under both the Acts.

19. Therefore, the Motor Accident Claims Tribunal was wrong in dismissing the claim application as not maintainable.

20. The order impugned is set aside. The application for compensation is restored to its original file and number.

21. The Motor Accident Claims Tribunal is requested to consider the application for compensation in accordance with law, but as expeditiously as possible, preferably within six months from the date of receipt of the copy of this order by the Tribunal.

22. By way of abundant caution, we make it clear that we have not gone into the merits of the claims and counter claims of the parties involved in the application for compensation and all points for consideration are left open.

23. The office is directed to send down the Lower Court's records immediately with a copy of this order to the Tribunal below.

24. With the aforesaid directions, the appeal and the connected application for expeditious disposal of the appeal filed under C.A.N. 3607 of 20087 are, thus, disposed off.

25. We make no order as to costs.

26. The office is directed to supply xerox certified copy of this order to the applicant, if applied for, on urgent basis.