
(2007) 01 CAL CK 0017

Calcutta High Court

Case No: C.O. No. 1684 of 2006

Sabyasachi Das

APPELLANT

Vs

New India Assurance
Co. Ltd. and Another

RESPONDENT

Date of Decision: Jan. 15, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Constitution of India, 1950 - Article 227
- Motor Vehicles Act, 1988 - Section 163A, 166
- West Bengal Motor Vehicles Rules, 1989 - Rule 329

Citation: (2008) ACJ 2072

Hon'ble Judges: Kalidas Mukherjee, J

Bench: Single Bench

Advocate: Krishanu Banik, for the Appellant;

Judgement

Kalidas Mukherjee, J.

This is an application under Article 227 of the Constitution of India challenging the impugned Order No. 19 dated 16.3.2006, passed by Mr. S. Dasgupta, the learned Additional District Judge, Sixth Fast Track Court, Alipore in M.A.C. Case No. 97 of 2004 rejecting hereby the petition filed by the claimant-petitioner under Order 6, Rule 17, CPC for amendment of the petition. The case of the petitioner-claimant, in short, is that he filed a claim case u/s 163A of the Motor Vehicles Act being M.A.C. Case No. 97 of 2004 against the opposite party before the Motor Accidents Claims Tribunal, Alipore praying for compensation of Rs. 2,50,000 on account of the injury in motor accident. Incident took place on 21.5.2004 at about 13.30 hours at Digha-Macheda Road near Dakshin Kalamdar caused by the offending vehicle (bus) No. WB 25-B 1168. The offending vehicle was owned by O.P. No. 2 and insured with New India Assurance Co. Ltd. Due to the said motor accident the petitioner sustained multiple severe injuries all over the body, the compound fracture of right elbow and both bones of the right hand, causing

permanent disablement to a substantial extent. The victim was aged 28 years and had substantial monthly income at the time of the said accident. The O.P. New India Assurance Co. Ltd. has filed written statement and contested the claim before the Claims Tribunal. The petitioner filed an application under Order 6, Rule 17, CPC in connection with M.A.C. Case No. 97 of 2004 praying for amendment of original claim petition to introduce the phrase "just compensation" instead of amount claimed Rs. 2,50,000 as against item No. 22 of the claim petition. Learned Tribunal vide Order No. 19 dated 16.3.2006 was pleased to reject the petition filed by the claimant. Being aggrieved by the said order passed by the learned Tribunal, the claimant has preferred the instant application under Article 227 of the Constitution of India.

2. Learned advocate appearing on behalf of petitioner has submitted that the claim was preferred u/s 163A of the Motor Vehicles Act and as per the format given under Rule 329 of the Motor Vehicles Rules there is no necessity to mention the amount claimed as against item No. 22. In this connection the learned Counsel has referred and cited the decision in [Nagappa Vs. Gurudayal Singh and Others](#). It is the contention of the learned advocate for the petitioner that as per the principle enunciated in the aforesaid decision there (is no necessity to mention any amount and it is sufficient if "just compensation" is mentioned as against item No. 22 of the claim petition.

3. Learned Tribunal below held that the claim petition has been initiated as per Rule 329 of the West Bengal Motor Vehicles Rules, 1989 in Form Comp. A in which the claimant has to mention the amount claimed without which the claim petition would not be entertainable. It appears that the principle of "just compensation" as enunciated in the aforesaid decision relates to the petition u/s 166 of the Motor Vehicles Act. But in the instant case before the learned Tribunal the claim petition was filed u/s 163A of the Motor Vehicles Act. Section 163A provides for payment of compensation on no fault liability in terms of the structured formula. The principle of "just compensation" being applicable in connection with application u/s 166 of Motor Vehicles Act, the principle laid down in the aforesaid decision is not applicable in the facts of the instant case. Learned Tribunal, therefore, was justified in rejecting the petition filed by claimant-petitioner under Order 6, Rule 17 of the CPC praying for amendment for the claimed petition. The instant application under Article 227 of the Constitution of India is, therefore, (sic dismissed) with no order as to costs. Interim order stands vacated.

4. The department is directed to send a copy of this order to the learned Fast Track Court (Sixth Court), Alipore.