

ITEM NO.64

COURT NO.6

SECTION XVI

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).17301-17302/2007

(From the judgement and order dated 19/09/2006 in FMA No. 363/2002 of the HIGH COURT OF CALCUTTA)

UNITED INDIA INSURANCE CO.LTD.

Petitioner(s)

VERSUS

SHILA DATTA & ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP and office report)
(FOR FINAL DISPOSAL)

Date: 03/12/2007 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE H.S. BEDI

For Petitioner(s) Mr. Atul Nanda,Adv.
Ms. Rameeza Hakim,Adv.
Mr. Sandeep Bajaj,Adv.
Mr. Rajesh Kumar,Adv.
for M/S. Law Associates & Co.,Advs.

For Respondent(s) Mr. Subhro Sanyal,Adv.
for Mr. R.S. Suri,Adv.

UPON hearing counsel the Court made the following

ORDER

Delay condoned.

Leave granted.

One of the contentions raised in these appeals is the correctness of a three-Judge

Bench decision of this Court in National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi and Ors., [2002 (7) SCC 456], which is said to be pending consideration in a large

number of cases before this Court. Assailing the correctness of the aforesaid decision Mr.

Atul Nanda submits that therein the liability of the insurer to reimburse the insured on

two premises, namely, (1) just compensation; and (2) whose liability would be to pay, as

2

envisaged under sub-section (1) of Section 149 vis-a-vis the right of the aggrieved persons (which would include the insured) to prefer an appeal in terms of Section 173 of the Motor Vehicles Act, had not been considered in the backdrop of the history in which sub-section (1) of Section 149 was enacted.

Apart from the question raised by Mr. Nanda, we are of the opinion that the matter may be considered from other angles, namely, whether the insurer shall be wholly without any remedy even if the amount of compensation is determined in violation of the

standard formula envisaged under the second schedule of the Act or in clear violation of the ratio(s) laid down by this Court.

We, therefore, are of the opinion that it is a fit case where the matter should be referred to larger Bench. We direct accordingly. Let the records of the case be placed before Hon'ble the Chief Justice of India for appropriate orders.

Liberty to mention.

The petitioner shall, however, deposit 50% of the amount awarded in favour of the respondents, together with interest subject, of course, to any adjustment which has already been deposited, within six weeks from date.

(A.S. BISHT)
COURT MASTER

(PUSHAP LATA BHARDWAJ)
COURT MASTER