IN THE CIRCUIT BENCH OF HIGH COURT, CALCUTTA AT JALPAIGURI

PRESENT:

THE HON'BLE JUSTICE ARINDAM MUKHEREJEE.

F.M.A No.2 OF 2019

RAFIKUL ISLAM & ORS.
VS.
UNITED INDIA INSURANCE COMPANY LTD. & ANR.

For the Petitioner	:	Mr. Gobinda Saha ... Advocate.
Heard on	:	11.03.2020, 12.03.2020, & 13.03.2020.
Judgment on	:	**21st October, 2020.**

Arindam Mukherjee, J.:

1) Alfa Khatun @ Begum said to have been hit by a truck having Registration No.UP-91-T-0069 (hereinafter for the sake of convenience referred to as the offending vehicle) while she was standing on the road near Moulani Hospital, PS – Malbazar, Dist.-Jalpaiguri on 13th June, 2016 at about 04:30 p.m. Alfa Khatun succumbed to the injuries sustained out of such road traffic accident and died on the same day, i.e., 13th June, 2016. A police case was registered in

connection with the accident at Malbazar Police Station being Case No.274 of 2016 under Sections 279/338/304(A) of the Indian Penal Code on 15th June, 2016. Alfa Khatun (hereinafter referred to as the victim) was survived by her husband Rafikul Islam, three sons, namely, Alimul Haque, Majidul Hoque and Rafiul Hoque and a daughter Abija Khatun. Majidul and Rafiul were minors on the date of death of their mother Alfa Khatun. The husband and the children of the victim made an application under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as the said application). Stating that the victim was a daily rated worker and earned Rs.200/- per day. A sum of Rs.4,00,000/- was claimed as compensation. The said application was made on 4th July, 2016. The owner of the offending vehicle was impleaded as opposite party no.1 while the insurer as the opposite party no.2. The said application was contested by United India Assurance Company Limited being the insurer of the offending vehicle said to have caused the death of the victim. The owner of the offending vehicle did not contest the proceedings.

2) The First Motor Accidents Claims Tribunal, Jalpaiguri (hereinafter referred to as the said Tribunal) by an award dated 28th March, 2019 passed a final award directing the opposite party no.2 to pay to the petitioners an aggregate sum of Rs.4,59,500/- within a period of three months from the date of delivery of the judgment by segregating the amounts payable to each of the petitioners. The award also directed that the awarded sum will carry simple interest at the rate of 8 per

cent per annum from the date of the judgment until realisation of the entire amount, in the event, the opposite party no.2 failed to make payment as directed. The said award has been challenged by the petitioners in the instant appeal.

3) The main ground of challenge of the petitioners is that the said Tribunal erred in applying the structured formula enumerated in the Second Schedule in terms of Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as the said Act). Since the said Second Schedule had been amended on 22nd May, 2018 by replacing the structured formula by a lump sum amount of Rs.5,00,000/- payable in terms of the provisions of Section 163A of the said Act. The appellants say that in view of the Division Bench judgment of this Court reported in (2018) 6 WBLR (Cal) 329 (Urmila Halder vs. New India Assurance Co. Ltd. & Ors.), the said Tribunal ought to have held that the appellants were entitled to Rs.5,00,000/- on account of compensation under Section 163A of the said Act read with the amended Second Schedule inasmuch as the claim application was decided on 28th March, 2019, i.e., post 22nd May, 2018.

4) The insurance company in Urmila Halder (supra) has preferred a Special Leave Petition being Special Leave to Appeal (C) No.6260 of 2019 (The New India Assurance Co. Ltd. through Manager vs. Urmila Halder & Anr.). By an order dated 25th February, 2019, the operation of the judgment passed by the Division Bench of this Court in Urmila Halder (supra) was stayed until further orders. The insurance

company was directed to pay 50 per cent of the compensation awarded to the respondents within a period of four weeks. That the aforesaid Special Leave to Appeal was lastly heard on 2nd March, 2020 when four weeks further time was granted to the learned Counsel for the petitioner to do the needful as will appear from a copy thereof available in the web site of the Hon'ble Supreme Court.

5) The effect of an interim order staying the operation of the order under challenge had fallen for consideration before the Hon'ble Supreme Court in the judgment reported in AIR 1992 SC 1439 (M/s. Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association, Madras). The Hon'ble Supreme Court in paragraph 10 of the said report has held that stay of operation of an order only means that the order which has been stayed would not be operative from the date of passing of the stay order and it does not mean that the said order has been wiped out from existence. Taking into consideration the above observation of the Hon'ble Supreme Court in Chamundi Mopeds(supra) it can only be said that the Division Bench judgment of this Court in Urmila Halder (supra) is not operative on and from 25th February, 2019 when the same was stayed. Unless the order of the Division Bench in Urmila Halder (supra) is set aside or quashed, the Division Bench judgment is very much in existence save that does not operative until the Special Leave Petition is decided either by upholding the Division Bench Judgment of this Court or by setting

aside and / or quashing the same, such position will continue to remain.

6) It would be much simpler to decide the instant case if the position remained the same on March, 2020 when the appeal was finally heard. The position of law has, however, changed subsequent to passing of the judgment in Urmila Halder (supra) for the following reasons :-

(i) Section 163A along with the Second Schedule for payment of compensation on a structured formula was introduced in the said Act with effect from 14th February, 1994. It is now settled that the introduction of the said Section read with the Second Schedule is prospective in application. All claims arising subsequent to 14th November, 1994, could be made under such provision inasmuch as the same was not retrospective in operation and was also a completely new provision introduced in the said Act.

(ii) The Second Schedule was amended with effect from 22nd May, 2018 by doing with the structured formula and substituting the same with a lumpsum amount.

(iii) Urmila Halder (supra) was decided by the Division Bench of this Court on 9th August, 2018.

(iv) On 28th March, 2019 when the award was passed by the said Tribunal the judgment in Urmila Halder (supra) has been passed by the Division Bench of this Court but has been stayed on 25th February, 2019 by the Hon'ble Supreme Court.

(v) Section 163A contained in Chapter XI of the said Act has been omitted with effect from 1st September, 2019 pursuant to S.O. dated 30th August, 2019.

(vi) The position so far as Calcutta High Court is concerned has also changed after 9th August, 2018 when Urmila Halder (supra) was decided. In a full Court decision of the Calcutta High Court dated 19th November, 2019 it was decided that Appeals pertaining to Motor Accident Claim Cases will be admitted by a Division Bench of this Court but finally heard by a Single Bench. Normally, a Single Judge is bound by the decision of a Division Bench of the same Court unless there are conflicting views of two or more Division Bench placed before the Single Judge. The Division Bench judgment in Urmila Halder (supra) unless set aside or quashed by the Supreme Court is also binding on a Single Bench in absence of conflicting views as aforesaid which is not in the instant case. Reliance in this regard can be placed in the Constitutional Bench judgment of the Hon'ble Supreme Court reported in 2017 (16) SCC 680 [National Insurance Company Limited Vs. Pranay Sethi & Ors.]

7) The Division Bench of this Court in Urmila Devi (supra) held that all petitions / appeals to be heard post 22nd May, 2018 should be decided applying the amendment to the Second Schedule brought on 22nd May, 2018. The position, however, has further changed with effect from 1st September, 2019 when Section 163A has been omitted resulting in deletion of the amended Second Schedule from the said Act. A totally new situation has been created with the omission of Section 163A and the amended Second Schedule from the said Act. Section 163A was, however, not amended when the Second Schedule was amended with effect from 22nd May, 2018. The Second Schedule appears to have been amended with effect from 22nd May, 2018 under the provisions of sub-Sections 3 of Section 163A. Section 163A as it stood before being omitted is set out hereunder for the sake of convenience:-

> *"163- A. Special provisions as to payment of compensation on structured formula basis. -*
>
> *(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.*
>
> *Explanation. – For the purposes of this sub-section, "permanent disability" shall have the same meaning and*

extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living, by notification in the Official Gazette, from time to time amend the Second Schedule."

8) In order to resolve this peculiar situation, one can lay credence to the judgment of the Hon'ble Supreme Court reported in 2019 (3) SCC 572 (Union of India Vs. Rina Devi). The Hon'ble Supreme Court in the said case considered the issue "whether the quantum of compensation should be as per the prescribed rate of compensation as on the date of application / incident or on the date of the order awarding compensation". The said case though is in respect of claim of compensation under Sections 124 and 124A of the Railways Act, 1989, but the Supreme Court has taken into consideration several judgments including application of principles of Workmen's Compensation Act, 1923. The Workmen's Compensation Act, 1923, finds reference in the explanation to Section 163A(1) of the said Act. In view of such position, the findings in the judgment of the Supreme Court in Rina Devi (supra), therefore, gets attracted while deciding the instant case pertaining to compensation under Section 163A of the

said Act. In Rina Devi (supra) the Hon'ble Supreme Court in paragraph 18 has held "the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of the accident till payment at such rate as may be considered just fair from time to time". In the same paragraph, the Hon'ble Supreme Court has observed that the rate of interest applicable in motor accident claim cases can be held reasonable and fair. After taking note of all these parameters, the Hon'ble Supreme Court has in paragraph 19 of the report has held that "compensation as applicable on the date of accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given."

9) Rina Devi (supra) has been considered in two subsequent decisions of the Hon'ble Supreme Court of India – one of which has been delivered on 29th January, 2019 and the other on 13th February, 2020. In the judgment reported in 2019(3) SCC 410 [Union of India Vs. Radha Yadav] the Hon'ble Supreme Court has explained the view taken in Rina Devi (supra) in paragraph 11 (SCC page 413) which reads as follows:-

> *"11. The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in Rina Devi [Union of India v. Rina Devi, (2019) 3 SCC 572] is very clear.*

> *What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs 4,00,000. If, after applying reasonable rate of interest, the final figure were to be less than Rs 8,00,000, which was brought in by way of amendment, the claimant would be entitled to Rs 8,00,000. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs 8,00,000 the compensation would be in terms of figure in excess of Rs 8,00,000. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration."*

In the judgment reported in 2020(4) SCC 594 (K. Sivaraman & Others Vs. P. Sathishkumar & Anr.) the Hon'ble Supreme Court of India while dealing with the effect of deletion of the deeming provision in Explanation II to Section 4 of the Employees' Compensation Act, 1923 which capped the monthly wages of an employee at Rs.4,000/- brought on 18th January, 2010 with regard to the accidents those took place prior to 18th January, 2010 has clearly held in paragraph 33 (SCC page 611) as follows:-

> *"33. In the present case, the accident occurred on 31-1-2008 i.e. prior to the coming into force of Act 45 of 2009. Consequently, the High Court erred in extending the benefit of Act 45 of 2009 which deleted Explanation II to Section 4, to the present case. The High Court was required to determine the compensation payable on the date of the accident on which date, the deemed cap of Rs 4000 as monthly wages was applicable."*

10) Taking into consideration the findings of the Supreme Court, in Rina Devi (supra), Radha Yadav (supra) and K. Sivaraman (supra), I am of the view that the compensation receivable in case of an application / appeal decided on and from 1st September, 2019 when Section 163A read with the Second Schedule was completely omitted should be computed on the basis of the position of law that originally stood as on the date of the accident.

11) In the instant case, the accident took place on 13th June, 2016. The Second Schedule was not amended on the date of the accident. The Tribunal though decided the case on 28th March, 2019, i.e., post 22nd May, 2018 when the Second Schedule was amended should have decided the case applying the provisions of the amended Second Schedule particularly in view of the conclusion arrived at by the Division Bench of this Court in Urmila Devi (supra), being a judgment directly addressing the issue in respect of the said Act and amendment to the Second Schedule thereof though the operation of

such judgment remained stayed with effect from 25th February, 2019 i.e. prior to 28th March, 2019 when the Tribunal delivered its judgment and the judgment of the Supreme Court in Radha Yadav though delivered on 29th January, 2019 was not in respect of a case under the said Act. Having not done so, the Tribunal may have erred but with the subsequent change in law with effect from 1st September, 2019 on the omission of Section 163A and the Second Schedule from the said Act the method adopted by the Tribunal remains unaltered.

12) The error on the part of the Tribunal in applying the amended Second Schedule of the said Act that may have cripped up at the time of delivery of the award, has, however, negated by the subsequent change in the legal position as discussed above. The end result, therefore, remains to be correct, i.e., application of Section 163A with the unamended provisions of the Second Schedule of the said Act.

13) In view of such position, it has become, therefore, necessary to scrutinize the award on merits.

14) Section 163A with the unamended Second Schedule provided for assessing the compensation on a structured formula. In the judgment reported in 2009 (6) SCC 121 (Sarla Verma (Smt) & Ors. vs. Delhi Transport Corporation & Anr.) the applicable multiplier has been spelt out in paragraph 42 of the report. This view has remained the accepted view even today as will appear from the judgment reported in 2019 (12) SCC 398 (United India Assurance Co. Ltd. vs. Sunil Kumar).

In the judgment of Sunil Kumar (supra), the Hon'ble Supreme Court has also discussed the principle applicable while deciding an application for compensation made under Section 163A of the said Act. The Hon'ble Supreme Court in the said report in paragraph 8 thereof has held that

> *"8.From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163-A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the insurer and/or to understand the provisions of Section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163-A of the Act, namely, final compensation within a limited time-frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability were taking an unduly long time. In fact, to understand Section 163-A of the Act to permit the insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A of the Act on a par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention."*

15) On a reading of the impugned award, it appears that the said Tribunal has on basis of the materials on record come to a conclusion that the victim was aged 40 years at the time of the road traffic accident which took her life. The said Tribunal has applied the multiplier of 15 which has the multiplier held to be applicable for victims of the age group of 36 to 40 years in Sarla Verma (supra). There is no contrary evidence on record to show that the victim was not of the age of 40. In such circumstances, the said Tribunal has arrived at the correct age and has applied the cored multiplier. So far as the income of the victim assessed by the Tribunal is concerned, the assessment cannot be flawed if the same is considered in the touchstone of the finding of the Hon'ble Supreme Court in the judgment reported in (2018) 1 SCC 746 (Laxmidhar Nayak & Ors. vs. Jugal Kishore Behera & Ors.)). It will appear from Laxmidhar (supra) that the Hon'ble Supreme Court approved Rs.1,500/- per month to be the income of a victim who was a female agricultural labour. The Hon'ble Supreme Court has also approved that Rs.3,000/- per month to be her income from agricultural labour work taking the aggregate income of such agricultural labourer to be Rs.4,500/-. In the instant case, if we hold that the victim a home maker or a housewife engaged full time in household work in absence of any evidence to show her income as a daily labourer, her income for such work computed in monetary value would come to at least Rs.3,000/-, i.e., double of a female agricultural labour who earned from agricultural labour work and also did

household work. The victim in the instant case if considered to be only engaged in full time household work will, therefore, have a notional income of Rs.3,000/- at least. The said Tribunal considered the income of the victim to be Rs.3,000/-, i.e., Rs.36,000/- per year. The Tribunal has thereafter added 25 per cent of the said sum of Rs.36,000/- as future prospect which takes the yearly income of the victim to Rs.45,000/-. The Tribunal has thereafter deducted one-third of Rs.45,000/- as the personal expense of the victim and have arrived at a sum of Rs.30,000/-. The addition of 25 per cent as future prospect and deduction of one-third amount towards personal expenses is also in line with the observations made by the Hon'ble Supreme Court in the judgments reported in Pranay Sethi (supra) and 2018(2) SCC 753 [Reliance General Insurance Company Limited Vs. Shalu Sharma & Ors.]. Applying the correct multiplier of 15, the Tribunal has arrived at a sum of Rs.4,50,000/- as the loss of dependency. The Tribunal has thereafter awarded a sum of Rs.2,000/- for funeral expenses, Rs.2,500/- for loss of estate of the deceased and Rs.5,000/- towards loss of consortium to the petitioner no.1, the husband who lost his wife. The compensation assessed is, therefore, Rs.4,59,500/-.

16) The Hon'ble Supreme Court in Pranay Sethi (supra) has held that the reasonably figures on conventional heads namely loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The said amounts according to the

Hon'ble Supreme Court should be enhanced at the rate of 10% in every three years. The Tribunal has granted the amounts on these heads according to paragraph 3 of the Second Schedule of the said Act. In view of the observations made in Pranay Sethi (supra) I am inclined to grant Rs.15,000/- on account of funeral expenses, Rs.40,000/- as loss of consortium and Rs.15,000/- towards loss of estate. So the award is modified to that extent by adding an aggregate sum of Rs.70,000/- to Rs.4,50,000/- taking the same to Rs.5,20,000/-. The award shall carry interest at the rate of 9% per annum on and from 4th July, 2016 being the date of filing of the said application. I have increased the rate of interest from 8% as awarded by the Tribunal to 9% simple interest per annum keeping in mind the rate at which interest has been awarded in the recent cases decided by the Hon'ble Supreme Court of India.

17) After deducting Rs.4,59,500/- as awarded by the Tribunal from the enhanced amount of Rs.5,20,000/- the enhancement is 60,500/-. The enhanced amount with interest is in excess of Rs.5,00,000/- under the amended Second Schedule of the said Act which now stand omitted. Considering the view expressed by the Hon'ble Supreme Court in the judgments discussed hereinabove the enhanced rate should be also just and reasonable compensation which takes care of the increase in compensation provided by the amended Second Schedule of the said Act.

18) The opposite party No.2/respondent No.2 i.e. United India Insurance Company Ltd. is directed to issue five separate demand draft/bankers cheque corresponding to the following sum to the petitioners separately. United India Insurance Company Ltd. shall also calculate separately for each of the petitioner the interest accrued from 4th July, 2016 till payment on the respective sums directed to be paid to each of the petitioners and shall issue separate instrument for such interest in form of bankers cheque or demand in the name of each of the petitioners separately.

Appellant No.1/Petitioner No.1	Rs.1,00,000/-
Appellant No.2/Petitioner No.2	Rs.96,000/-
Appellant No.3/Petitioner No.3	Rs.96,000/-
Appellant No.4/Petitioner No.4	Rs.96,000/-
Appellant No.5/Petitioner No.5	Rs.96,000/-

The entire payment as aforesaid along with interest should be made within 30th November, 2020. The appellant no.1/petitioner no.1 is directed to keep the sum awarded to the minor appellant nos.4/petitioners nos.4 and 5 in fixed deposit schemes in any of the nationalized bank (other than any Gramin, or Co-operative Bank) or a post office till they attain majority.

The appeal is allowed in part accordingly. Parties to bear respective costs.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)