IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 2251 of 2013

Smt. Ruby Khatun & Ors.

Vs

Oriental Insurance Co. Ltd. & Ors.

For the Appellants : Mr. Jayanta Kumar Mandal, Advocate

For the Respondents : Ms. Gopa Das Mukherjee, Advocate

Hearing concluded on : September 07, 2022

Judgment on : September 08, 2022

Bibhas Ranjan De, J.

1. This appeal is directed against the Judgment and order dated 08.03.2013 passed by Learned 7th Additional District Judge, Motor accident Claims Tribunal, Alipore, South 24 Parganas, whereby Ld. Judge awarded compensation to the tune of Rs. 1,23,500/- and OP/respondent no. 1/ Oriental Insurance Company Ltd. was directed to pay the awarded amount in the manner prescribed therein, in disposing an application under section 163-A of the Motor Vehicle Act (for short MV Act).

2. Originally the application under 163-A of the MV Act was filed before the tribunal on the ground that on 14.04.2011 at about 04.00 a.m. a vehicle (bus) bearing reg. no. 65A/3651 was plying through 34 No. National Highway from Ranaghat to Kolkata and that bus was plying with high speed and dashed a trailor, as a result of which driver of said vehicle died on spot. According the claimant deceased being 38 years old man used to earn Rs. 3300 per month and plying compensation of Rs. 4,32,000/-.

3. On behalf of the claimant three witnesses were examined and document viz. copy of PM report, FIR, charge sheet etc. were admitted in evidence of exhibit 1 to 7.

4. Ld. Judge considering the age of the deceased and also considering no evidence regarding income of the deceased assessed the income of the deceased as Rs. 2000/- per month. Ld. Judge calculated the total award to the tune of award as Rs. 2,47,000/- after applying multiplier 15 and also after deducting the award towards personal expenses and further adding general damages.

5. Ld. Judge further apportioned the liability of the Insurance Company of the vehicle (bus) and the owner of the trailor. Accordingly, respondent no.1 Oriental Insurance Company was directed to pay Rs. 1,23,500/-i.e 50% of the total awarded sum.

6. Ld. Advocate appearing on behalf of the appellants assailed the assessment of monthly income at Rs. 2000/- by the tribunal. He has further submitted that deceased was driver, so, monthly income of the deceased cannot be assessed at Rs. 2000/- and his daily income should be fixed at least Rs. 100/- per day. In support of his contention he relied on the following authority:-

2018 (1) T.A.C 3(SC) United India Insurance Company Limited vs. Sunil Kumar and Another.

7. Ld. Advocate on behalf of the respondent insurance company supported the impugned judgment passed by the tribunal and submits that Insurance Company is not liable to pay the entire awarded amount as the incident took place by the involvement of both the vehicles.

8. In ***Sunil Kumar*** (supra) it was held as follows:-

> *" 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 163A(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 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A 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 was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding

> *under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim."*

9. Ld. Judge of the tribunal relying on the Police Report and other documents thereto, returned his finding that both the vehicles were involved in the accident and therefore Insurance Company and owner of the trailor are equally responsible for the payment of compensation. That is why he directed the insurance company of the bus to pay 50% of the assessed compensation amount.

10. In view of the ratio of ***Sunil Kumar*** (supra) wherein Hon'ble Apex Court keeping an eye to the legislative intention behind introduction of Section 163A of the Act, came to final opinion that in a proceeding under section 163A of the Act it is not open for the insurer to raise any defence of negligence on the part of the victim. Therefore, in this case we cannot apportion the awarded amount between insurer of the bus and owner of the trailor.

11. So far as the monthly income of the deceased is concerned I am in agreement with the ld. Advocate appearing on behalf of the appellants as there was no dispute in the case, as it appears form the evidence, that deceased was a driver. In these circumstances, income of Rs. 3000/- per month would be justified in computing the award.

12. In the aforesaid view of the matter the award is being computed as follows:-

Computation of award

Annual Income (Rs. 3000 x 12)	: 36,000.00
Less:-1/3rd for the personal expenses	:12,000.00
	24,000.00
Adding Multiplier:- x '15'	: 24,000.00 x15
	3,60,000.00
Add:- General Damages	: 9,500.00
Total Award	: 3,69,500.00

13. It is admitted fact that appellants have already withdrawn the amount of Rs. 1,23,500/. Enhanced compensation to the tune of Rs. 2,46,000.00/- has to be paid by the respondent/ Oriental Insurance Company along with interest at the rate of 6% per annum from the date of filling of the claim petition till the payment of the enhanced compensation, subject to payment of advelorem Court fees on the enhanced compensation.

Respondent/ Oriental Insurance Company is directed to deposit the enhanced amount to the Ld. Registrar General within six weeks from date.

14. Ld. Registrar General will release the amount in favour of the claimants on proper identification and also after verification of Court fees paid on the amount enhanced.

15. Let the records of the tribunal be sent back immediately.

16. F.M.A 2251 of 2013 is being disposed of without any order as to cost.

17. All pending applications, if any, stand disposed of accordingly.

18. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]