

16.11.2022
Item No.2
Crt. No.654.
KB

FMAT 805 of 2014

**Rabina Khatun @ Rubina Khatun & Ors.
-Vs-
Cholamandalam M/s. General Insurance
Company Ltd. and others.**

Mr. Subir Banerjee
Mr. Sandip Bandyopadhyay
Ms. Ruxmini Basu Roy
... For the Appellants.

Mr. Rajesh Singh
... For the Respondents.

This appeal is preferred against the judgement and order dated 28th September, 2012 passed by Learned Additional District Judge, 1st Court-cum-Judge, Motor Accident Claims Tribunal, Raiganj, Uttar Dinajpur in M.A.C. Case No.42 of 2009 under Section 163A of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 22.01.2009 at about 2 A.M. one truck bearing No.WB-59/0902 became stranded on the kachha portion of NH 34 near Durgapur Pathati and in front of the said vehicle another truck bearing No.WB-59/7491 was standing and another truck bearing No.WB-59/0178 was standing behind the said truck bearing No.WB-59/0902. At that time a truck bearing No.WB-29/7942 coming from Malda side towards Raiganj in a very rash

and negligent manner dashed the truck bearing No.WB-59/0178 and as a result of which four drivers and khalashis, including the victim who was a khalashi of truck bearing No.WB-59/7491, died on the spot. On account of the sudden demise of the deceased victim, the claimants, being his legal heirs filed application under Section 163A of the Motor Vehicles Act claiming compensation to the tune of Rs.3,00,000/- along with interest.

Upon consideration of materials on record, evidence, both oral and documentary, adduced on behalf of the claimants, the learned Tribunal granted compensation in favour of the claimants to the tune of Rs.94,500/-in favour of the claimants. Further liberty was given to the claimants to execute the award and claim interest @8% upon failure by the Insurance Company to deposit the said amount within one month.

Being aggrieved and dissatisfied with the impugned judgement and award, the claimants have preferred the present appeal.

Mr. Subir Banerjee, learned advocate for the appellants/claimants submits that the learned Tribunal erred in taking into account the notional income to the tune of Rs.15,000/- in calculating the

compensation whereas this Hon'ble Court in other decisions in the event of the accident occurring in the year 2009, has considered the income of the victim @Rs.2,000/- per month.

He further submits that the learned Tribunal ought to have granted interest on the compensation amount from the date of filing of the claim application.

Relying on the decision of this Court in **Arati Rani Dolai & Ors. Vs. Baser Ali Box & Ors.** reported in **[(2008)2 WBLR (cal) 59]** he submits that the beneficial legislation under Section 163A of the Motor Vehicles Act pertains to no fault liability and even a wrong doer is entitled to get compensation under such provision of law and therefore the question of contributory negligence or its assessment by the Learned tribunal does not arise while considering an application under Section 163A of the Motor Vehicles Act. In the light of his aforesaid submissions, he prayed for enhancement of the compensation amount.

Mr. Rajesh Singh, learned advocate for Respondent No.1/Insurance Company submits that the no fault liability envisaged under Section 163A of the Motor Vehicles Act is based on structured compensation as per second schedule of the Act and

such schedule is to be adhered while calculating compensation under such provisions of law.

With regard to the income of the deceased victim, it is found that the learned Tribunal has considered the notional income @15,000/- per annum. However, considering the price index prevailing during the relevant point of time and bearing in mind the catena of the decisions of the Court, I am of the opinion that an income of Rs.2,000/- per month of the deceased-victim should be apposite in calculating just and fair compensation.

It appears from the impugned judgement that the learned Tribunal proportionately reduced the compensation amount taking into consideration the aspect pertaining to contributory negligence of the victim. The provision of Section 163A of the Motor Vehicles Act is reproduced for convenience of discussion as hereunder.

“[163A. 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 purpose of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923). [For permanent disability, see page 200, Schedule 1 of Workmen’s Compensation Act, 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 Gazettee, from time to time amend the Second Schedule”.

As per the aforesaid provision it manifest that in any claim for compensation under the aforesaid provision the claimant is not required to plead or establish that the death or permanent disablement in respect of which 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. Therefore, from a plain reading of the aforesaid provision of the Act, it is clear that after introduction of

Section 163A of the Act based on no fault liability the person injured or dead in an accident is not required to establish the factum of negligence. In this aspect I concur with the submissions advanced by Mr. Banerjee relying on the decision of the respondents by this Court in **Arati Dolai @ Arati Rani Dolai & Ors. (supra)**. Thus the learned Tribunal erred in reducing the amount of compensation proportionately on the ground of contributory negligence.

Learned advocate for the appellants-claimants submits that the multiplier of 17 adopted by the learned Tribunal has been correctly made.

As far as the interest is concerned, it is found that the interest has been allowed as a default clause and therefore such aspect needs to be modified. The appellants-claimants are entitled to get interest @ 6% from the date of filing of the claim application till the deposit is made.

Monthly Income : Rs. 2,000/-

Annual Income : Rs. 2,000 X 12

Rs.24,000/-

Deduction 1/3rd Rs. 8,000/-

Rs. 16,000/-

Multiplier 17 X 17
(Victim aged about 24 years)

Rs.2,72,000/-

General damages Rs. 9,500/-

Rs. 2,81,500/-

Thus total compensation comes to Rs.2,81,500/-.

ENHANCED AMOUNT – Rs. 1,87,000/- + 6% interest.

It is informed that an amount of Rs.94,500/- has been received by the claimants. The claimants are entitled to get interest @ 6% on the aforesaid amount i.e. Rs.94,500/- from the date of filing of the claim application till the deposit was made before the learned Tribunal if the interest is not paid. The claimants are further entitled to get the balance amount of compensation of Rs.1,87,000/- along with the interest @ 6% per annum from the date of filing of the claim application till the deposit.

The respondent no.1/Insurance Company is directed to deposit the balance amount and the interest as indicated above by way of a cheque before the Learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Learned Registrar General shall disburse the amount in favour of the appellants/claimants in equal share upon satisfaction of their identity.

The appellant no.1, being the mother and natural guardian of minor appellant no.2 shall receive the share of the minor and shall invest the said amount in a Fixed Deposit Scheme in a Nationalised Bank or Post Office till attainment of majority by the said minor.

The appeal stands allowed.

The impugned judgement and award of the Learned Tribunal is modified to the aforesaid extent.

All applications, if any, are also allowed.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Bivas Pattanayak, J.)