

31.01.2023
SL No.5
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

F.M.A. 584 of 2020

**Saraswati Bhaumik @ Bhowmik & Anr.
Vs.
Oriental Insurance Co. Ltd.**

Mr. Jayanta Kumar Mandal
...for the appellants-claimants.

Mr. Rajesh Singh
....for the respondent No.1-Insurance Co.

This appeal is preferred against the judgment and award dated 9th August, 2019 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 3rd Court, Tamluk, in M.A.C. Case no. 131 of 2017 granting compensation of Rs.2,06,250/-together with interest under Section 163A of the Motor Vehicles Act, 1988.

As per the report of an Additional Stamp Reporter dated 3.12.2019 the appeal is preferred within the statutory period of limitation.

Accordingly, the appeal is formally admitted and registered.

Since the respondent no.2-owner of the offending vehicle did not contest the claim application before the learned tribunal and the case was proceeded *exparte* against him, hence service of notice of appeal upon the said respondent is dispensed with.

With the consent of both the parties, the preparation of informal paper books and calling for of lower court records is dispensed with.

The brief fact of the case is that on 25th July, 2017 at about 2 PM while the victim was standing on the extreme left side of Haldia-Mecheda Pitch road near Kolsore Bus Stoppage keeping his motorcycle beside the road at that time the offending vehicle bearing registration no.WB-29A/9854 dashed the victim and his motorcycle with great force, as a result of which victim sustained injuries all over his body and head and was immediately taken to Purba Medinipur District Hospital, at Tamluk and thereafter was shifted to Nightangle Nursing Home, Tamluk. As the condition of the victim deteriorated he was taken to NRS Medical College & Hospital, Kolkata where he succumbed to his injuries and died on 2.8.2017. On account of sudden demise of the victim, the claimants being the parents filed application under Section 163A of the Motor Vehicles Act, 1988 for compensation.

The claimants in order to establish their case examined two witnesses and produced documents which are marked as **Exhibits 1 to 8** respectively.

Respondent no.1-insurance company did not produce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned tribunal calculated the compensation amount of Rs.4,12,500/-. However, it granted 50% of the aforesaid amount which is Rs. 2,06,250/- to the claimants on the ground that two vehicles were involved in the accident.

Being aggrieved by and dissatisfied with the impugned judgment and award the claimants have preferred the present appeal.

Mr Jayanta Kumar Mandal, learned advocate for appellants-claimants submits that the learned tribunal apportioned the compensation amount without considering the fact that the application is one under Section 163A of the Motor Vehicles Act. In a given case apportionment can be made on the basis of extent of negligence, however, in an application under Section 163A of the Act the court is not required to decide the aspect of negligence and therefore the apportionment made by the learned tribunal is improper and bad in law which requires to be set aside. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***United India Insurance Co. Ltd versus Sunil Kumar and Another*** reported in ***2018 (1) T.A.C 3 (S.C)***. In view of his aforesaid submissions, he prays for modification of the impugned award.

Mr Rajesh Singh, learned advocate for respondent no.1-insurance company in his usual fairness submits that in an application under Section 163A of the Motor Vehicles Act negligence need not be proved.

Having heard the learned advocates for respective parties the sole issue that has fallen for consideration is whether the learned tribunal was justified in making apportionment of the compensation amount in an application under Section 163A of the Motor Vehicles Act, 1988.

Before delving into the question posed in this appeal, it would be profitable to reproduce the relevant provisions embodied under section 163A of the Motor Vehicles Act as hereunder for the sake of convenience.

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 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.]

From the aforesaid provisions it is quite clear that in an application under Section 163A of the Act the claimant shall not be 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 other person. Apportionment of compensation in a given case can be made when there is evidence of extent of negligence. However, since in an application under Section 163A of the Act the aspect of negligence is not required to be gone into, the question of apportionment is implausible. So far as the apportionment of compensation made by the learned tribunal is concerned, save and except that two vehicles were involved in the accident there are no reasons whatsoever for apportionment of the same. Therefore, the order of the learned tribunal making apportionment of the awarded sum requires to be set aside. I find substance in the submission of Mr Mandal learned advocate for appellants-claimants relying on the decision of Hon'ble Supreme Court in ***Sunil Kumar's Case (supra)***.

It is informed that the claimants have already received the awarded sum together with interest. Accordingly, the claimants are entitled to the balance amount of compensation of Rs.2,06,250/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

Respondent no.1-insurance company is directed to deposit the balance amount of compensation of Rs.2,06,250/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Appellants-claimants are directed to deposit *ad valorem* court fees on the balance amount of compensation, if not already paid.

Upon deposit of the balance compensation amount together with interest as indicated above, learned Registrar General, High Court, Calcutta shall release the amount in favour of the claimants in equal proportions and upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

With the aforesaid observation, the appeal stands disposed of. The impugned judgment and

award of the learned tribunal stands modified to the above extent. No order as to cost.

All connected applications, if any, stands disposed of.

Interim order if any stands vacated.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)