IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 578 of 2007

Laxmi Halder & Ors.

Versus

The National Insurance Company Limited and Ors.

For the Appellants : Mr. Krishanu Banik, Adv.

Mr. Tathagata Banik, Adv.

For the Respondent No. 1/National Insurance Company

: Mr. M.P. Chakraborty, Adv.

Ms. Ratnadipa Karmakar, Adv.

Heard on : 25.06.2024

Judgment on : 08.07.2024

Ajay Kumar Gupta, J:

1. This instant First Miscellaneous Appeal has been filed by the appellants/claimants being aggrieved by and dissatisfied with the Judgment and Award dated 16.03.2006 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track 2nd Court, Burdwan in M.A.C. Case No. 94/585 of 2005/2004, thereby, the learned Tribunal Judge allowed the claim petition in part on contest but without any cost. The petitioners are entitled to award of compensation of Rs. 1, 00,000/-. Out of which the petitioner no. 1, namely, Lakshmi Haldar will get Rs. 34,000/- and the rest of the two petitioners, namely, Sumita Haldar and Purnima Haldar will get Rs. 33,000/- each. The National Insurance Company Limited is directed to pay the entire amount of compensation to the respective petitioners by way of issuing a/c payee cheques in the manner as stated above through the learned Tribunal within 30 days from the date of passing of this order failing which the entire amount shall carry simple interest @ 9 % p.a. till realization in full. The petitioner no. 1, the mother of the minor Sumita Haldar is given liberty to receive the cheque for and on behalf of her minor daughter and she is directed to invest the said share of money on account of her minor daughter separately to any nationalized bank/post office under any long term fixed deposit with a liberty to withdraw the interest as accrued thereon and to spend the same for the purpose of her welfare till she attains majority in an application u/s 163-A of the Motor Vehicles Act, 1988.

2. The fact of the claimants' case, in brief, is that this M.A.C. case arose out of an application u/s 163A of the M.V. Act as filed by one Lakshmi Haldar and others claiming compensation of Rs. 5, 00,000/- for sudden death of Sanjoy Haldar, which was taken place on 06.11.2004 at 20 hrs near Chakdighi bazaar under P.S. Jamalpur by the offending vehicle bearing No. WB-42G/8437. The victim was proceeding by a motorcycle which was driving by one Kajal Das. When they reached near the place of occurrence, they met with an accident. The deceased fell down and sustained multiple injury and was admitted to SSKM hospital where he died. According to the petitioners, due to such accidental death of the victim their family suffered both pecuniary and non-pecuniary loss. Hence, they have filed this case claiming compensation of Rs. 5, 00,000/- from the Opposite Parties.

3. The opposite party no. 1/Owner of the vehicle did not contest the case. The OP no. 2/National Ins. Co. Ltd. has contested this case by filing written statement as well as petition u/s 170 of the M.V. Act wherein all the material allegations and contentions as made in the petition in respect of mode, manner of accident, age and income of the deceased were denied and disputed. According to the Insurance Company, the claim is inflated, whimsical, abnormal and without any equitable basis and as such the petitioners are not entitled to get the amount as claimed.

4. Parties have adduced evidence before the Learned Tribunal. The case falls under 'no fault liability.' The claimants have to prove only the involvement of the offending vehicle and accident in which the victim suffered injury and subsequently succumbed to such injury. After considering the case of the parties as well as appreciation of evidence, the learned Tribunal finally, awarded the compensation amounting to tune of Rs. 1,00,000/-

5. The age of the victim was 30 years, by occupation he was a businessman and running a shop namely Joymatara Electronics and Engineering shop at Jamalpur, Bazar and his monthly income was Rs. 3,300/-. The claimants have claimed a compensation amounting to Rs. 5,00,000/- only. It was submitted by the Learned counsel appearing on behalf of the Insurance company, the Learned advocate for the appellants himself frankly admitted and consented that appellants will not get more than Rs.1,00,000/= as compensation because it is fact that Sanjoy Halder was the owner of the offending vehicle of two wheelers and from the Insurance Policy it would be evident that premium for the personal accident was paid.

6. This court does not endorsed the submission made by the Learned advocate for the respondent because as per new amendment, when a person dies due to motor traffic accident, claimant or claimants is/are entitled to get Rs. 5,00,000/- as lump sum amount of compensation and it has given retrospective effect.

7. The learned advocates appearing on behalf of the appellants referred two decisions. Firstly, passed by Division Bench of this Court in **Urmila Halder vs. New India Assurance Co. Ltd. & Ors. (FMA 446 of 2010)**[1]

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[1] **2018 SCC Online Cal 11751, 2019 (2) TAC 143 (Cal)**

wherein the Division Bench of this Court has held that total sum of Rs. 5,00,000/- in a fatal accident falls under Section 163A of the Motor Vehicles Act, 1988 should be paid. It has retrospective effect though the amendment has come into effect on and from 22nd May, 2018 as such application pending prior to the amendment shall have retrospective effect.

Secondly, a judgment passed in **New India Assurance Co. Ltd. –vs.- Urmila Halder** in **Special Leave Petition (Civil) No. 6260 of 2019**, The Hon'ble Supreme Court has affirmed the view taken by this Court and further held as under:

> *"The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on the claimant in the absence of any specific bar to the same. In the present case, the liability of*

the appellant-Insurance company has not been interfered with. Only the computational mode and the modality- have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to Rs.5,00,000/= (Rupees Five lakhs).”

8. This instant appeal is squarely covered by the judgment of the Hon'ble Supreme Court passed in **The New India Assurance Co. Ltd Versus Urmila Halder** in **Special Leave Petition (Civil) No. 6260 of 2019**. Hence, the claimants are entitled to get a fixed compensation of Rs. 5,00,000/- on account of death caused by Motor Vehicle Accident as there is no dispute about the involvement of the vehicle and the death of the victim was caused due to accident as claimed and proved. There is also no dispute about the validity of Insurance Policy of the offending vehicle with the Respondent No. 1/Insurance Company on the date of accident.

9. It is submitted by learned advocates appearing on behalf of the National Insurance Company that the compensation allowed by the Learned Tribunal has already been received by the claimants. Accordingly, appellants/claimants are entitled to get enhanced compensation amount (Rs. 5,00,000/- minus 1,00,000/-) to the tune of Rs. 4,00,000/= (Rs. Four Lakhs only) which shall carry interest @ 6% per annum from the date of filing of the claim application till final payment.

10. The respondent no. 1/Insurance Company is directed to pay the enhanced compensation amount together with interest as indicated above by way of cheque before the Office of Learned Registrar General, High Court, Calcutta within a period of six weeks from this date.

11. Learned Registrar General, High Court, Calcutta, upon deposit of the enhanced compensation amount together with interest on the awarded compensation amount as indicated above, shall release the amount in favour of the appellant/claimant Nos. 1 and 2 in equal share upon proper identification and subject to verification of the payment of ad valorem Court fees on the total compensation amount, if not already paid. The appellant No. 3 expired on 14.07.2014 and same is recorded vide order dated 13.02.2024 by this Court.

12. With the above observations, the instant appeal being **FMA 578 of 2007** is, thus, **allowed** after modifying the impugned judgment and award dated 16th March, 2006 to the extent as aforesaid without order as to costs. Connected applications, if any, are also, thus, disposed of.

13. Let a copy of this Judgment along with Lower Court Records, if any, be sent back to the learned Court below forthwith for information.

14. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

15. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)