

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA No. 2207 of 2016

Reshmi Devi @ Reshama Devi & Ors.

Vs

The Commissioner of Police, Lal Bazar Street, Kolkata.

**For the Appellants/
Claimants**

: Mr. Ashque Mondal.

For the Respondent

**: Mr. Wasim Ahmed,
Md. Mashud.**

Hearing concluded on

: 16.07.2024

Judgment on

: 08.08.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the Appellants/Claimants against the Award passed on March 15, 2013 by Ld. Addl. District Judge, 3rd Court at Alipore, being M.A.C. Tribunal in M.A.C.C. No. 80 of 2012, **under Section 163A M.V. Act.**

2. FACTS :-

“Claimants/Petitioners are the legal heirs and dependent of victim deceased Brahmdev Das who used to work as a cobbler and used to earn Rs. 3,300/- P.M. As per case of the petitioners, on 14.02.2012 at about 12-35 hrs., the victim Brahmdev Das was mending shoes as cobbler by sitting at the western side end of Kolkata Police Training school Parade Ground and at the relevant point of time, the driver of the vehicle of the Kolkata Police lines bearing registration No. W.B. 04B 8465 was driving the said police vehicle at a high speed and reckless manner and suddenly it took a turn towards the western side and knocked down the victim causing serious injuries.

The victim was taken to S.S.K.M. Hospital where he expired soon after his admission. It is alleged that the sole cause of the said motor vehicle accident was the reckless driving of the police vehicle by its driver. It is alleged that as a result of the unfortunate death of victim, the petitioners have not only been suffering from financial loss but also seriously affected by mental pain and agony and they will have to suffer the same throughout their life. For all these reasons the petitioner/claimant side has prayed before this court for awarding compensation of Rs. 4,00,000/- (Rupees four lakh) with other benefit and interest.”

3. The O.P. contested this claim case by filing written statement, where they have denied all the material allegations which have been depicted in the claim petition. The specific case of the O.P. which emerged from the written statement in a nutshell is that this claim case is not

maintainable in its present form and in the eye of the law and it has been filed by the petitioners by suppressing material facts in order to achieve wrongful gain. It is also pointed out by the O.P. that the tribunal did not have the jurisdiction to try this case and the petitioners are not the actual claimants. It was further stated that the victim was solely responsible for the accident and for that reason the opposite party is not responsible to pay any compensation.

4. The Claimants examined **two witnesses** and proved relevant documents which were marked as exhibits.
5. The opposite party did not examine any witness.
6. **The tribunal finally held as follows :-**

“M.A.C.C. No. 80 of 2012

Dated: 15.03.2013

From the evidence on record it appears that the petitioner was aged about 44 years which indicates that multiplier would be 15. Now the petitioner side has claimed that the income of the deceased was Rs. 3,300/- p.m. but fact remains that no satisfactory document has been produced and proved by the petitioner side to prove the income. On the point of income the P.W. 2 has supported the case of the petitioner but the P.W.2 is not the competent authority for ascertaining the income of the victim. Under this position this court has no other way but to accept the principle of notional income. The petitioner/claimant side in the matter of assessment of compensation has referred the case laws 2009(II) ACJ 1298(SC), 2009(2) TAC Page 677 (SC), 2011 WBLR (3) Page 453 (Cal), 2007 WBLR (1) Page 596(Cal) and 2012 (1) TAC page 12 (SC). But fact remains that the argument highlighted by the petitioner side on this point and the case laws referred by the petitioner side are not applicable in this instant case as the fact and circumstances of this case is otherwise different.

So the amount of compensation which the petitioner side is entitled to get in this claim case would be Rs. 15,000/- X 15 – 1/3rd of the said amount = Rs 1,50,000/- (Rupees One lakh fifty thousand only). In addition to the said amount the petitioner/claimant side is also entitled to get Rs. 9,500/- for funeral expenses, loss of estate and for loss of consortium. The total amount of compensation would be Rs. 1,59,500/- (Rupees one lakh fifty nine thousand five hundred only). In addition to the said amount the petitioners are also entitled to get interest @ 9% p.a. from the date of filing of this case.

Sd/-
M.A.C. Tribunal Judge,
3rd Court, Alipore”

7. From the materials on record it is evident that :-

- i) The present claim is under **Section 163A** of the Motor Vehicles Act and it has been proved that the victim died in an accident involving the offending vehicle.
- ii) The income of the victim was claimed to be **Rs. 3,300/-** but without documents the Notional income of **Rs. 15,000/-** was considered.
- iii) He has aged about **44 years**.
- iv) **Exhibit 8 shows that the offending vehicle did not have any insurance.**

- 8. (a) In *Urmila Halder Vs. New India Assurance Co. Ltd. & Ors., in F.M.A. 446 of 2010, decided on 9th August, 2018*, the Calcutta High Court held:-**

“9. Sub-section (1) of Section 163-A of the 1988 Act ordains that notwithstanding anything contained therein or in any other law for the time being in force,

upon proof of death in an accident involving the use of a motor vehicle, compensation is payable either by the owner of such vehicle or the authorized insurer thereof as indicated in the Second Schedule to the legal heirs of the victim. The Second Schedule appended to the 1988 Act, referring to Section 163-A thereof, provides the structured formula for determining compensation.

11. As it stands now, the Second Schedule after its amendment by the said notification prescribes lump-sum compensation in the following manner:

- 1. Fatal accidents - Rs. 5,00,000.00 is payable as compensation in case of death;*
- 2. Accidents resulting in permanent disability - Rs. 5,00,000.00 x percentage of disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923), provided that the minimum compensation in case of permanent disability of any kind shall not be less than Rs. 50,000.00;*
- 3. Accidents resulting in minor injury - A fixed compensation of Rs. 25,000.00.*

14. With that in view, we invited such learned advocates to address us on the following issue:

Whether, after the amendment brought about by the said notification, the new schedule would be applicable to pending claim applications under Section 163-A before the motor accident claim tribunals as well as the appeals arising out of awards delivered there under prior to May 22, 2018?

118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied by the tribunals/this Court for determining compensation payable to the legal heirs of an accident victim or to the victim himself regardless of whether the new schedule is beneficial to them or not. The issue framed in paragraph 12 is, accordingly, answered.

126. Turning to the facts in the appeal, we find that had this appeal been decided prior to May 22, 2018, the appellant would have been entitled to whatever sum were determined as payable in terms of the old schedule. Admittedly, Rs.5,00,000.00 was not payable

to the appellant by the respondent no.1 any time prior to May 22, 2018 and, therefore, she was not entitled to such sum as on date she exercised her "right of action". Therefore, in each case where the claim is pending before the tribunal or if this Court has been approached in appeal as on May 22, 2018, we feel it to be the duty of the tribunal/Court to determine the amount of compensation payable to the claimant in terms of the structured formula and award interest at such rate it considers proper thereon from the date of filing of the claim application till May 21, 2018. To avoid any charge of arbitrariness, it would be safe to award interest at the prevailing bank rate of interest on term deposits on the date the award is made. Thereafter, that is from May 22, 2018, interest on Rs.5,00,000.00 may be directed to be paid till realization as per the prevailing bank rate of interest on term deposits.

*127. To determine what the appellant could have lawfully claimed as compensation based on the old schedule, we need to look into the evidence. The version of the appellant that the victim was earning Rs.2,000.00 per month could not be dislodged by the respondent no. 1 in cross-examination. The victim being self-employed in the unorganized sector, the tribunal put an onerous burden on the appellant to produce documentary evidence to prove her monthly income. Having regard to the decision in *Syed Sadiq v. United India Insurance Co. Ltd.*: (2014) 2 SCC 735, we hold that it was not necessary for the appellant to prove the income of the victim by producing documentary evidence. The loss of dependency, thus, has to be worked out reckoning Rs.24,000.00 as the notional yearly income of the victim. Capitalizing it on a multiplier of 17, the resultant amount would be Rs.4,08,000.00. Deducting 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining herself had she been alive, and adding Rs.4,500.00 on account of loss of estate and funeral expenses, we arrive at the sum of Rs.2,76,500.00.*

128. In the final analysis, we hold that the appellant shall be entitled to Rs.5,00,000.00 on account of compensation under Section 163-A of the 1988 Act read with the new schedule. However, since she has received Rs. 1,14,500.00 that was awarded by the tribunal, the

respondent no.1 shall pay Rs.3,85,500.00 more to the appellant within 2 (two) months from date of service of a copy of this judgment and order on it. The appellant is further held entitled to interest as follows:

- (i) @ 9% per annum on Rs.2,76,500.00 from the date of filing of the claim application, i.e., February 8, 2005 till May 21, 2018; and
- (ii) @ 6% per annum on Rs. 5,00,000.00 from May 22, 2018 till such time payments of Rs. 3,85,500.00 and interest as in (i) above are effected in favour of the appellant.”

(b) In appeal, the Supreme Court in ***The New India Assurance Co. Ltd.***

Vs. Urmila Halder, Civil Appeal No. ____ of 2024 (@ Special Leave Petition (Civil) No. 6260 of 2019), decided on 8th February, 2024,

upheld the above judgment and held:-

“4. The short point for consideration before this Court is whether the amendment in Section 163-A of the Motor Vehicles Act, 1988, which came into effect by a Gazette Notification on 22nd May, 2018, would relate to an accident which had occurred prior to the said date.

10. 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 to 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 ₹5,00,000/- (Rupees Five Lakhs). As 50% of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks.”

9. **In the present appeal**, the claim was decided by the tribunal on 15th March, 2013, thus prior to 22nd May, 2018 and compensation of a sum of Rs. 1,59,500/- was granted in terms of the old schedule.
10. **Now, in terms of the guidelines** of the Courts, in the judgments, ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.(Supra)*** and ***The New India Assurance Co. Ltd. Vs. Urmila Halder (Supra)***, the Appellants/Claimants are entitled to compensation of a total sum of **Rs. 5,00,000/- under section 163A of the 1988 M.V. Act read with the new schedule.**
11. Admittedly, the **Appellants/Claimants** have already received the amount of compensation of **Rs. 1,59,500/-** in terms of order of the Learned Tribunal. Accordingly, the **Appellants/Claimants** are now entitled to the balance amount of compensation of **Rs. 3,40,500/-** together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.
12. **Respondent/ The Commissioner of Police, Lal Bazar Street, Kolkata**, is directed to deposit the balance amount along with the interest as indicated above, by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date. The **Respondent/ The Commissioner of Police, Lal Bazar Street, Kolkata**, shall also pay the interest upon the sum of Rs. 3,40,500/- at the rate of 6% till deposit if not already paid, within the period as specified above.

13. Upon deposit of the aforesaid amount and the interest, learned Registrar General, High Court, Calcutta shall release the amount in favour of the **Appellants/Claimants** (Wife and Children of the deceased) **in equal proportions**, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.
14. **The appeal being FMA 2207 of 2016 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.**
15. All connected applications, if any, stand disposed of.
16. There will be no order as to costs.
17. Interim order, if any, stands vacated.
18. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.
19. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)