

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 575 of 2014

(FMAT 356 of 2013)

Santawna Biswas & Ors.

Vs

The Oriental Insurance Company Limited & Anr.

For the Appellants : Mr. Amit Ranjan Roy.

**For the Respondent No. 1/
Insurance Company** : Mr. Rajesh Singh.

Hearing concluded on : 11.06.2024

Judgment on : 19.06.2024

Shampa Dutt (Paul), J.:

1. The present Appeal by the claimants (substituted) has been preferred against the Judgment and Award passed on 31st August 2010 by Sri Sambhu Nath Chatterjee, Member, Motor Accident Claims Tribunal, Additional District Judge, 4th Court, Nadia, in M.A.C. Case No. 347 of 2006 under **Section 163 A of the Motor Vehicles Act, 1988.**
2. The brief facts of the case is as follows:-

“That on 05.08.2006 while the victim Anuday @ Naba Kumar Biswas was travelling in the bus, bearing No. WGB-5665, named ‘ATANU’ for going from Karimpur to Krishnagar. At that time when the bus reached near Paninala Satyapriya Smriti Siksha Niketan at a very high speed, it dashed against a mango tree and overturned into a roadside ditch. As it result, many passengers received severe injuries and some of them died on the spot. The victim also lost his left leg and he was admitted in Shaktinagar Hospital for treatment, but he died there. His P.M. examination was held on the self-same day.

After the accident Kotwali P.S. Case No. 238/06 dated 05.08.2006 u/s 279/338/304A I.P.C. was started.

It was stated that the victim at the time of accident used to earn Rs. 3,000/- per month. The vehicle in question was

insured with the Oriental Insurance Co. Ltd. and the insurance policy was valid at the relevant point of time.

On the basis of the said fact, the Claimants prayed for compensation to the tune of Rs. 4,00,000/-.

The owner of the offending vehicle did not contest the case and as such, the case proceeded ex parte against him.

The Oriental Insurance Co. Ltd. contested the case by filing written objection and it was denied that due to rash and negligent driving of the vehicle in question the said accident took place. It was stated that the deceased had no fixed income and actual income of the victim has been suppressed and the amount claimed is an exaggerated one and as such the petitioners are not entitled to get any compensation.”

- 3.** The claimant examined three witnesses on their behalf, and proved documents marked Exhibit 1 to 4.
- 4.** P.W.1 being the spouse stated that the victim had an income of Rs. 3,000/- per month.
- 5.** P.W.2 an eyewitness stated that he admitted the victim at Shaktinagar Hospital.
- 6.** P.W. 3, a police witness has deposed that the victim, aged 36 years died in an accident and that the post mortem was conducted under

the Kotwali P.S. Case which was registered in respect of the accident in this case.

7. The Respondent/Insurance Company did not examine any witnesses on their behalf.
8. **The Learned Tribunal** granted a sum of Rs. 1,66,000/- in total in favour of the petitioners on the following Calculation:-

“..... Notional income of Rs. 15,000/- per annum is to be considered in calculating the quantum of compensation and since the victim at the time of death was aged 36 years, so multiplier ‘16’ is to be applied in this case, If 1/3rd from the said notional income of 15,000/- is deducted towards personal expenses of the victim had he been alive, then the contribution of the victim to his family would have been Rs. 10,000/- per year and multiplying ‘16’ with this amount, the amount is worked out at Rs. 1,60,000/-, which the petitioners are entitled to get in this case. In addition, they are entitled to get funeral expenses of Rs. 2,000/- and loss of estate Rs. 2,000/- and the Petitioner No.1 being the widow of the deceased is also entitled to get a sum of Rs. 2,000/- as loss of consortium. So, in total the petitioners are entitled to get Rs. 1,66,000/-.”

9. Tribunal records are before this court.
10. Being aggrieved the claimants have preferred the appeal on the following grounds:-

- i) *That the monthly income of the deceased should have been considered as Rs. 3,000/- per month. Applying the notional income is not in accordance with law and against the principle of Natural Justice.*
- ii) *The appellants are entitled to statutory compensation and interest under Section 171 of the M.V. Act, 1988.*

11. The Calcutta High Court, in the case of ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors., F.M.A. 446 OF 2010, decided on 9th August 2018***, 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.”*

- 12.** 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.”*

13. **In the present appeal**, the claim was decided by the tribunal on 31st August, 2010, thus prior to 22nd May, 2018 and compensation of a sum of Rs. 1,66,000/- was granted in terms of the old schedule. But it appears that no interest has been granted on the said amount of compensation.
14. **But in terms of the guidelines** of the Courts in the judgments of ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors. (Supra) & The New India Assurance Co. Ltd. Vs. Urmila Halder (Supra)***, the 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.**
15. Admittedly, the Claimants have already received the amount of compensation of Rs. 1,66,000/- in terms of order of the Learned Tribunal but without interest. Accordingly, the present claimants of

the victim being appellants no. 1 and 3 are now entitled to the balance amount of compensation of Rs. 3,34,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit, on the total amount of Rs. 5,00,000/-.

16. Respondent No. 1-Insurance Company thus is directed to deposit the balance amount and 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 no. 1 shall also pay the interest upon the sum of Rs. 1,66,000/- at the rate of 6% till deposit if not already paid, within the period as specified above.
17. Present appellants-claimants of the victim being appellants no. 1 and 3 are directed to deposit *ad- valorem* Court fees on the balance amount of compensation assessed, if not already paid.
18. Upon deposit of the aforesaid amount and the interest, learned Registrar General, High Court, Calcutta shall release the amount in favour of the claimants in equal proportions upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.
19. **The appeal being FMA 575 of 2014/FMAT 356 of 2013 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.**
20. No order as to costs.
21. All connected applications, if any, stand disposed of.
22. Interim order, if any, stands vacated.

- 23.** Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)