

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 711 of 2013

Smt. Sabera Khatun

Vs

The Oriental Insurance Company Ltd. & Anr.

**For the Appellant/
Claimant**

: Mr. Subir Banerjee.
Mr. Sandip Bandyopadhyay,
Ms. Rukmini Basu Roy.

**For the Respondent No. 1/
Insurance Company**

: Mr. Rajesh Singh.

**For the Respondent No. 2/
Owner**

: None.

Hearing concluded on

: 14.08.2024

Judgment on

: 21.08.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the claimant against the judgment and award dated 16.03.2012, passed by Judge, Motor Accident Claims Tribunal, 2nd Court, Siliguri in MAC Case No. 9 of 2008, **under Section 163A of the Motor Vehicles Act, 1988.**

2. Facts :-

“On 31.10.07 at about 5.30 P.M. victim Nazhat Per ween while as a pillion rider of a motor cycle bearing registration No. BR-37/9622 being driven by Soukat Rahaman was coming from Bahadur-Ganj side towards their home, then one Truck bearing No.06-HC/0867 which was proceeding towards Bahadur Ganj side from Kisangunj end at Pachim Palichak, the Truck which was proceeding at a high speed in a negligent manner lost its control and going to the wrong side dashed against motor cyclist. As a result victim sustained multiple severe injuries and though she was taken to M.G.M. Medical College and Hospital at Kisangunj but ultimately she died.”

3. O.P.No.2/Oriental Insurance Co. Ltd. contested the case by filing W/O contending inter alia that case is not maintainable, having no cause of action, bad for non-joinder of necessary parties. O.P. disputed Para Nos. 8, 9, 11, 12 and 14 of the claim petition and demanded strict proof of all those. This O.P. demanded production of route permit, tax token, fitness certificate, D/L registration certificate and other particulars of the vehicles and stated that claim petition has been brought for illegal gain. It was stated that victim should be held liable for her own laches, fault and contributory negligence. O.P. denies Para Nos. 3, 4, 6, 22 of the claim petition stating clearly that victim had no earning as stated of Rs.3,000/- p.m. and was not a tailor. O.P. denies that the accident took place due to reckless, careless and high speed

driving of the vehicle. O.P. craves leave of this tribunal to seek and avail of all defences, legal right and protection u/Sec.147, 149, 170 of M.V. Act. This O.P. denied, about alleged accident, death of victim, her age, earnings, if any and in view of above others prays for dismissal of the claim petition.

4. O.P. No. 1/owner in this case did not appear but he sent written objection by post mentioning facts that on the material date and time his truck was under insurance coverage.
5. The claimant examined two witnesses and relevant documents were proved and **marked exhibit 1 to 13.**
6. The opposite parties did not adduce any evidence.
7. **The Tribunal finally held as follows :-**

“MAC Case No. 9 of 2008

Dated: 16th March, 2012

..... About amount of compensation, I have considered age and earnings if any of deceased. From Ext.4 I do find that death of victim in which he was born 15.9.89. That being so, said victim on 31.10.07 was about 18 years of age.

About earning no such cogent documents came-up before me. I remember that Ld. lawyer for the petitioner tried her level best to convince this Tribunal that deceased was a Tailor and she had earnings worth Rs 3,000/-P.M. After investing sound judicial mind to the submission for the Ld. lawyer of the petitioner, I cannot at-one with her. Possession of a tailoring certificate (Not professional one) cannot be said that the holder of certificate is a Tailor. In the circumstance notional income of the victim can only be considered.

Choosing -16 as multiplier amount of compensation comes to Rs. 1,60,000/-. In apart from that amount, I am inclined to add Rs. 4,500/-

for funeral expenses and for loss of estate and thus amount of compensation comes to Rs. 1,64,500/-.

About responsibility of payment of compensation it is my view that both the motor cycle bearing No.BR-37/9622 and Truck bearing No.MP-06/HC-0867 are jointly & severally liable for payment of compensation. Here, in this trial Motor Cycle not made party.

What I want to say that neither owner nor insurer of Motor cycle made party here. It is clear that on the material date and time, the concerned Truck was under Insurance coverage of the Oriental Insurance Co. Ltd. Allahabad Bank Building, Hill Cart Road, Siliguri. Accordingly 50% of the amount of compensation to be borne by this Oriental Insurance Co. Ltd. and liability for rest 50% will be for the owner of Motor Cycle or its insurer subject to the payment of any compensation U/Sec.140 of M.V. Act if received earlier.....

***Sd/-
Judge,
MACC Tribunal
2nd Court, Siliguri.”***

8. From the materials including evidence on record, the following is evident:-

- (i) The age of the victim was 18 years at the time of accident.
- (ii) She had a certificate of training in tailoring.
- (iii) The claimant's daughter (unmarried) is the victim in this case and it has been proved that she died in the Road Traffic accident in this case.
- (iv) Only the truck bearing no. MP 06/HC-0867 has been chargesheeted as the offending vehicle (Exhibit 5).
- (v) Exhibit 6, is the (valid) insurance policy of the offending vehicle (truck).

9. The Respondent/Insurance Company in this case, were represented since 18.02.2013.

10. In view of the said facts, the finding of the tribunal that the offending vehicle (truck) along with the motor cycle (not chargesheeted) are jointly liable, being not in accordance with law is **set aside**.

11. The present claim is under Section 163A of the M.V. Act.

12. (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.”*

13. **In the present appeal**, the claim was decided by the tribunal on 16th March, 2012, thus prior to 22nd May, 2018 and compensation of a sum of Rs. 1,64,500/- was granted in terms of the old schedule.
14. **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 Appellant/Claimant is 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 **Appellant/Claimant** has already received **Rs. 82,250/-** being 50% of the amount of compensation of **Rs. 1,64,500/-** in terms of order of the Learned Tribunal. Accordingly, the **Appellant/Claimant** is now entitled to the balance amount of compensation of **Rs. 3,35,500/- plus Rs. 82,250/-= Total Rs. 4,17,750/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

- 16. In view of the findings at paragraph 10 above, the Respondent No. 1/Insurance Company**, is directed to deposit the **balance amount of Rs. 4,17,750/-** along with 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/Insurance Company** shall also pay the interest upon the **sum of Rs. 4,17,750/-** at the rate of 6% till deposit, within the period as specified above.
- 17.** Upon deposit of the aforesaid amount with interest, learned Registrar General, High Court, Calcutta shall release the amount in favour of the **Appellant/Claimant**, upon satisfaction of her identity and payment of *ad-valorem* Court fees, if not already paid.
- 18. The appeal being FMA 711 of 2013 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.**
- 19.** No order as to costs.
- 20.** All connected applications, if any, stand disposed of.
- 21.** Interim order, if any, stands vacated.
- 22.** Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.
- 23.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)