IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMAT 928 of 2013

(FMA 296 of 2014)

Smt. Sova Devi
Vs.
The New India Assurance Company Ltd. & Anr.

For the Appellant : Mr. Krishanu Banik,

For the Respondent/ Insurance Company : Mr. Saibalendu Bhowmik.

Hearing concluded on : 20.06.2024

Judgment on : 26.06.2024

Shampa Dutt (Paul), J.:

1. The present claims appeal has been preferred against the Judgment and Award dated 19th December, 2012 passed by the Motor Accident Claims Tribunal, Fast Track, 2nd Court, Asansol in M.A.C. Case No. 53 of 2006 & M.A.C. Case No. 173 of 2006 .

2. ***The facts of the case is as follows:-***

> *"That a motor vehicle accident took place on 01.05.2006 at about 4.00 a.m. on road near Village – Vawpur under P.S. Auriya, District. Chhapra.*
>
> *Due to the aforesaid accident the deceased being the Khalashi of the truck being No. HR-38M/4539 sustained serious injuries on his person and he was shifted to Govt. Hospital, Auriya where he died on 02.05.2006".*

3. The New India Assurance Co. Ltd. in its written objection challenged the claim narrative, while the owner of the offending vehicle did not contest the case.

4. The O.P. No. 2/Insurance Company inter alia alleged that the instant case is not maintainable.

5. The claimant examined one witness and produced documents which were exhibited, being the FIR **(Exhibit – 1),** P.M. report **(Exhibit-2),** copy of Insurance Policy **(Exhibit-3).**

6. Considering due materials and evidence on record, the learned Tribunal held as follows :

"M.A.C. Case No. 53 of 2006
M.A.C. Case No. 173 of 2006.

Dated: 19.12.2012.

"In the instant case, no documentary evidence rather cogent evidence of earning of the deceased came from the side of the petitioner. In this situation, it is the settled principle of law that notional income of Rs.100/- per day should taken into consideration. Therefore, considering the notional income deceased's monthly income stands Rs.3,000/- p.m. Therefore, the annual income of the deceased comes to Rs.36,000/- (Rs.3,000/- X 12). After deducting 1/3rd from the same as personal expenses the amount stands Rs.24,000/- (Rs.36,000/- - Rs.12,000). Now, by applying the multiplier '13' the amount stands Rs.3,12,000/- (Rs.24,000/-X '13'). Therefore, the petitioner is entitled to get the said amount of Rs.3,12,000/-. In addition to that petitioner is entitled to get Rs.4,500/- under the heads of loss to the estate and funeral expenses. So, the total compensation comes to Rs.3,16,500/- (Rs.3,12,000/- + Rs.4,500/-)….

Sd/-
Judge, M.A.C.T.,
F.T.C-2, Asansol".

7. Being aggrieved, the claimant/appellant/mother of the victim has preferred the present appeal on the ground:-

That the award of compensation under appeal is not 'Just Compensation' and that the claimant is entitled to the same in accordance with law.

8. The respondent/insurance company has contended that as the annual income of the victim was more than Rs.40,000/-, the claimant was not entitled to compensation as prayed.

9. The monthly income of the victim is shown as Rs.3,000/- plus @ Rs.30/- 'Khoraki' daily. **Dictionary meaning of 'Khoraki'** means, daily allowance for food or money to purchase it, subsistence money, board wages.

10. Though the claimant has stated about 'Khoraki' there is no proof of the same.

11. Considering that the claim is under a beneficial legislation, the income of the victim is taken as Rs.3000/- per month. Thus annual income is Rs. 36,000/-.

12. The following Judgments are relied upon:-

a) In ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.,*** F.M.A. 446 OF 2010, decided on 9th August, 2018 (Calcutta High Court), it was 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 an appeal, ***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 (Supreme Court), it was 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 22nd August, 2013, thus prior to 22nd May, 2018 and compensation of a sum of Rs. 3,16,500/- was granted in terms of the old schedule.

14. The notional yearly Income has been **fixed by the tribunal** at Rs. 36,000/- with multiplier 13, comes to a sum of Rs. 4,68,000/-.

15. Deducting 1/3rd there from towards personal expenses, the final amount of compensation of Rs. 3,12,000 was granted in favor of the claimants.

Thereafter, a total compensation of Rs. 3, 16, 500/- was granted after addition of Rs. 4,500/- towards general damages.

16. **But in terms of the guidelines** of the Courts in the judgments relied upon by the claimants/appellants, 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.**

17. Admittedly, the Claimants have already received the amount of compensation of **Rs. 3, 16, 500/-** in terms of order of the Learned Tribunal. Accordingly, the claimants are now entitled to the balance amount of compensation of Rs. 1,83,500/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

18. 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.

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

20. 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.

21. **The appeal being FMA 296 of 2014/FMAT 928 of 2013 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.**

22. No order as to costs.

23. All connected applications, if any, stand disposed of.

24. Interim order, if any, stands vacated.

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

(Shampa Dutt (Paul), J.)