

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

**FMA 2951 of 2016
(FMAT 1195 of 2015)**

Shriram General Insurance Company Limited

Vs

Dwijen Roy & Ors.

**For the Appellant/
Insurance Company**

: Mr. Rajesh Singh.

**For the Claimants/
Respondent No. 1 to 4**

: Ms. Ayantika Roy.

**For the Respondent No. 5/
Owner**

: None.

Hearing concluded on

: 10.07.2024

Judgment on

: 02.08.2024

Shampa Dutt (Paul), J.:

1. The Insurance Company has preferred the present appeal against the award dated 17th day of April, 2015 passed by Learned Judge, Motor Accident Claims Tribunal, Fast Track Court, District – Cooch Behar, in M.A.C. Case No. 18 of 2011 (Dwijen Roy & Ors. –Vs- Janab Ali Mia & Anr.), **under Section 163A of the Motor Vehicles Act, 1988.**

2. THE FACTS :-

“On 09.08.2010 at about 14.30 hours deceased Basanti Roy and another lady named Sarodini Roy were returning their respective home from Central Bank of India, Pundibari Branch, after completion of their banking work along the left flank of the metal road on foot. While they reached near Pundibari Netaji Bhaban then all on a sudden, one Truck bearing no. WB-69/3748 dashed said Basanti Roy and Sarodini Roy from their back side and ran over said Basanti Roy. The truck was coming at a very high speed and in a very rash and negligent manner. As a result said Basanti Roy sustained grave multiple bleeding injuries on her person including head and said Sarodini Roy sustained grave multiple injuries on her person. Thereafter they were taken to Pundibari Block Primary Health Centre, Dist. – Cooch Behar by the local people of that locality and during their admission, there on examination Basanti Roy was declared ‘Dead’ by the attending Doctor and said Sarodini Roy was referred to Cooch Behar MJN Hospital for better treatment and management. Victim Basanti Roy was by profession a worker of one Swa-Nirbhar Ghosthi and she was an earning member of her family and used to maintain her family by earning Rs. 3,000/- per month. The petitioners being husband and daughters (legal heirs) have filed this case for compensation of Rs. 4,00,000/- (Four Lakhs) only from the OPs for causing loss and damages suffered by them

owing to the death of deceased Basanti Roy by use of the vehicles bearing no. WB-69/3748.”

3. Both the opposite parties appeared after receipt of notice in this case and filed their written statements but only the O.P. No. 2/Insurance Company contested this case.
4. The O.P. No.2/Shriram General Insurance Co. Ltd. has contested this claim case in absence of the registered owner of the Truck being No. WB 69/3748 taking permission of the tribunal to contest the case and by submitting its written statement, denying all the material allegation of the claim.
5. The claimants examined two witnesses and relevant documents were marked **Exhibit 1 to 7**. The opposite party/Insurance Company/Appellant herein did not adduce any evidence.
6. **The Learned Tribunal finally held as follows :-**

“M.A.C.C. No. 18 of 2011

Dated:-17.04.2015

In view of the Second Schedule of the M.V. Act the compensation amount would be of Rs 5,76,000/- after excluding One-Third of this amount, as in view of Second Schedule it would have incurred by the deceased for her own expenses. In addition to that the petitioners are entitled funeral expenses and loss of consortium. They are not entitled to get any compensation as loss of estate as there is loss of Estate.

Accordingly, the compensation amount would be (Rs. 5,76,000/- - 1,92,000/-) = Rs. 3,84,000/- + Rs. 5,000/- (As Funeral Expenses)+ Rs. 20,000/- (As loss of Consortium). Then it net total Rs. 4,09,000/-.

**Sd/-
Motor Accident Claim Tribunal
Additional District Judge,
Fast Track Court, Cooch Behar**

7. The Insurance Company being aggrieved has preferred the appeal on the ground that **the offending vehicle did not have a route permit.**

8. **Considering the materials and evidence on record, it is evident that :-**

i) There being no documents of Income (victim being a housewife), the income of the deceased be fixed at Rs. 3000/- per month considering that the accident occurred on 09.08.2010. **(Kirti & Anr. Etc. Vs Oriental Insurance Company Ltd., AIR 2021 SC 353)**

ii) Age of the victim was 30 years, thus **multiplier of 17** would be applicable. **(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)**

iii) The offending vehicle had valid license (Exhibit – 6).

iv) The contention of the Insurance Company/Appellant is that the offending vehicle did not have the respective route permit.

9. The Supreme Court in **Amrit Paul Singh & Anr. vs Tata AIG General Insurance Co. Ltd. & Ors., in Civil Appeal No. 2253 of 2018 (arising out of SLP (Civil) NO. 7692 of 2017), decided on May 17, 2018**, held:-

“23. *In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the*

*time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in **Swaran Singh** [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and **Lakhmi Chand** [Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100 : (2016) 2 SCC (Civ) 45] in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the “Tripitaka”, that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the Tribunal as well as the High Court had directed that the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in **Swaran Singh** [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] and other cases pertaining to pay and recover principle.”*

10. The accident in this case is not denied. But the case of the appellant that the offending vehicle did not have a route permit, has not been proved before the tribunal.

11. Section 163A M.V. Act lays down:-

“163A. Special provisions as to payment of compensation on structured formula basis.— (1)

Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

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 **17th**

April 2015, thus prior to 22nd May, 2018 and compensation of a sum of

Rs. 4,09,000/- 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 Respondents/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 **Appellant/Insurance Company** has deposited the amount of compensation of Rs. 4,09,000/- in terms of order of the Learned Tribunal. Accordingly, the **Respondents/Claimants** are now entitled to the total amount of compensation of Rs. 5,00,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit, on the total compensation amount.
16. Taking into consideration, the amount already deposited by the **Appellant/Insurance Company**, the **Insurance Company** shall deposit the **balance amount of Rs. 91,000/- along with the interest on the total compensation amount** with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the **Claimants/Respondents** (husband and three daughters of the deceased) in equal proportion, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.
17. **The impugned judgment and award of the learned Tribunal is modified to the above extent.**
18. **The appeal being FMA 2951 of 2016/FMAT 1195 of 2015 stands disposed of and as prayed for by the Appellant, without prejudice to the rights of the appellant.**

- 19.** All connected applications, if any, stand disposed of.
- 20.** There will be no order as to costs.
- 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 certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)