

**IN THE HIGH COURT AT CALCUTTA**

**(Civil Appellate Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**FMA 503 of 2014**

**(FMAT 1509 of 2013)**

**Smt. Hazera Mondal & Anr.**

**Vs**

**ICICI Lombard General Insurance Co. Ltd. & Anr.**

**For the Appellants** : Mr. Krishanu Banik,  
Mr. Tathagata Banik.

**For the Respondent/  
ICICI Lombard General  
Insurance Co. Ltd.** : Mr. Sayak Majumder.

**Hearing concluded on** : 11.06.2024

**Judgment on** : 18.06.2024

**Shampa Dutt (Paul), J.:**

1. The appeal has been preferred against the Judgment and Award dated 22<sup>nd</sup> day of August, 2013 passed by the Learned Judge, Motor Accident Claims Tribunal, 1<sup>st</sup> Court, Burdwan (hereinafter called as the Learned Tribunal Judge) in M.A.C. Case No. 57 of 2010.

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

*That on 19.07.2010 when the Victim being a Khalasi was traveling in a truck bearing No. NL-05-D-7177 which was going through the Panagarh-Moregram road towards Illambazar side, at about 01.05 hours when the said truck reached near Baruipur More, it dashed another truck bearing No. WB-57A-5684 from backside. As a result, the victim sustained severe injuries and died on spot. Over the said accident Illambazar P.S. Case No. 100/10 dated 19.07.2010 U/s- 279/427/304A I.P.C. was started. At the material point of time, the victim was aged about 26 years and was a Khalasi of the said truck No. NL-05-D-7177 and used to earn Rs. 3,300/- per month and due to his sudden demise, claimants being parents of the deceased and legal heirs of the deceased, suffered severe mental pain and agony, other than financial distress. Accordingly they have filed the instant application praying for compensation of Rs. 4,30,000/- along with interest.*

3. The Claimants in support of their case examined the mother of the victim, who corroborated the case as stated in the written complaint.
4. Respondent No. 1 i.e. Insurance Company contested the case by filing written statement denying the claim of the claimants.
5. Though the owner respondent appeared before the tribunal, he subsequently did not contest the case.

6. The lower court records are before this court.
7. Upon considering the materials on record, including the evidence, the learned tribunal held as follows:-

**“M.A.C. Case No. 57/10**

**Dated: 22.08.2013**

*..... The Insurance company inspite of having all the necessary documents did not file any application U/s-170 of M.V. Act but that cannot be a bar for payment of the compensation on behalf of the insured as the claim is in connection with third party.*

*So, therefore, the entire facts and circumstances of the case it appears that primarily the claimant has been able to prove that her son Rahamat Ali Mondal has died because of the said road traffic accident. Since it is a case U/s- 163A of M.V. Act so the petitioner is not to prove whether at the time of accident the vehicle was traveling in a rash and negligent manner or not. On perusal of record it is seen that P. W.1 has filed voter identity card of herself and her husband Moksad Ali Mondal. So, as per above the claimants are entitled to receive the compensation.*

*Regarding the age it is stated that the victim was aged about 26 years at the time of accident and in support of that they have filed voter identity card and P.M report which also corroborates the said age and there is no contradictory evidence has come regarding such age. But to ascertain the multiplier. Accordingly, multiplier 18 is to be considered.*

*Regarding the income it is stated that he was a Khalasi and used to earn Rs. 3,300/- per month but no documentary or any oral evidence has come to prove the same and no where it is stated that he was a khalashi. From the charge sheet it is seen that the complaint said there after identifying the body that he was a khalashi. So it cannot be said that the claimant has able to prove that he was a khalashi and therefore his income is taken as Notional Income of Rs 25000/-. Accordingly considering the income as that of Rs. 25,000/- per*

*annum with multiplier 18, the amount comes to Rs. 4,50,000/- and deducting 1/3<sup>rd</sup> there from towards personal expenses had he been alive, the amount comes to Rs. 3,00,000/-. So, Claimants are entitled to received Rs. 3,00,000/-.....*

**Sd/-  
Judge, M.A.C.T.,  
1<sup>st</sup> Court, Burdwan”**

**8. Hence, the Appeal on the following grounds:-**

- i) That the Learned Tribunal was wrong in holding the income of the deceased as Rs. 25,000/- p.a. instead and in place of Rs. 39,600/- (Rs. 3,300/- X12) while disposing of the present claim case and as such the impugned award is bad in law and the same is liable to be set aside.*
- ii) That the Learned Tribunal did not consider the pecuniary and non-pecuniary damages /compensation towards the applicants/claimants while disposing of the present claim case.*
- iii) The Learned Tribunal also did not consider the future prospect of the deceased while passing the impugned award and as such the impugned award.*

**9. Mr. Krishanu Banik, learned counsel for the claimants** has placed the following judgments in support of the claimants case:-

- a) **Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.**, F.M.A. 446 OF 2010, decided on 9<sup>th</sup> August, 2018 (Calcutta High Court).*
- b) **The New India Assurance Co. Ltd. Vs. Urmila Halder**, Civil Appeal No. \_\_\_\_ of 2024 (@ Special Leave Petition (Civil) No. 6260 of 2019), decided on 8<sup>th</sup> February, 2024 (Supreme Court).*

**10. Mr. Sayak Majumder, learned counsel appearing for the Respondent**

**No.1/Insurance Company** fairly submits that the claim in this case being under Section 163A of the M.V. Act, the judgments relied upon by the claimant is applicable in the present case.

**11. On hearing the parties and considering the materials on record it is evident that:-**

- (i) *The victim died in an accident involving a truck bearing no. WB-57A-5684 on 19.07.2010, while travelling as a Khalasi in a truck bearing No. NL-05-D-7177.*
- (ii) *His income has been shown as Rs. 3,300/- per month.*
- (iii) *His parents are his only legal heirs.*
- (iv) *The accident took place due to the rash and negligent driving by the driver of the truck bearing No. NL-05-D-7177. (Though not required to be proved, considering that the claim is under Section 163A of the M.V. Act).*
- (v) *The insurance policy copy seized shows valid insurance in the name of the Owner/Respondent No. 2.*
- (vi) *The post mortem report of the victim shows the cause of death as due to the injuries sustained in the road traffic accident.*
- (vii) *The victim was aged about 26 years at the time of incident.*

**12. The relevant extracts of the judgments relied upon is being reproduced herein:-**

- a) 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 9<sup>th</sup> 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.”*

- 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 8<sup>th</sup> 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 22<sup>nd</sup> 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 22<sup>nd</sup> August, 2013, thus prior to 22<sup>nd</sup> May, 2018 and compensation of a sum of Rs. 3,00,000/- was granted in terms of the old schedule.
14. The notional yearly Income has been **fixed by the tribunal** at Rs. 25000/- with multiplier 18, comes to a sum of Rs. 4,50,000/-. Deducting 1/3<sup>rd</sup> there from towards personal expenses, the final amount of compensation of Rs. 3,00,000 was granted in favor of the claimants.
15. **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.**
16. Admittedly, the Claimants have already received the amount of compensation of Rs. 3,00,000/- in terms of order of the Learned Tribunal. Accordingly, the claimants are now entitled to the balance amount of compensation of Rs. 2,00,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.
17. **Mr. Banik** submits that the claimants have not received the interest as applicable on the amount of Rs. 3,00,000/- and prays for the same to be granted.

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. The respondent no. 1 shall also pay the interest upon the sum of Rs. 3,00,000/- at the rate of 6% till deposit if not already paid, within the period as specified above.
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 503 of 2014/FMAT 1509 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.)**