

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 3535 of 2016

Parbati Das & Anr.

Versus

The Oriental Insurance Company Limited and Ors.

For the Appellants : Mr. Krishanu Banik, Adv.
Mr. T. Banik, Adv.

For the Respondent No. 1/Insurance Company
: Ms. Sucharita Paul, Adv.

Heard on : 19.04.2024

Judgment on : 05.07.2024

Ajay Kumar Gupta, J:

1. This instant First Miscellaneous Appeal has been filed by the appellants/claimants being aggrieved by and dissatisfied with the Judgment and Award dated 22nd day of September, 2015 passed by the learned Additional District and Sessions Judge, Motor Accident Claims Tribunal, Fast Track Court, Balurghat, Dakshin Dinajpr in M.A.C. Case No. 121 of 2013, thereby, the learned Tribunal Judge awarded the compensation amounting to tune of Rs. 1,64,500/- and that should be paid only to the petitioner No. 1, namely, Parbati Das, within 2 months from the date of passing award along with interest @ 8 % per annum from the date of filing of the claim petition in an application u/s 163-A of the Motor Vehicles Act, 1988.

2. The fact of the claimants' case, in brief, is that on 25.06.2013 at about 3.30 hrs. the victim Gopal Das @ Chhotan Das was proceeding towards his house at Hili from Balurghat side by boarding of the vehicle bearing No.

WB-61 7450 (Trekker) when the said trekker reached at Baxiganj under P.S. Hili at about 03.30 pm the driver of the vehicle sharp turned the vehicle as because road is curved ahead without slowing down the vehicle. Due to such act of the driver of the vehicle by giving a heavy jerk and due to that jerking the victim fell down from his seat of the vehicle on the road and the rear wheel of the said vehicle ran over the victim. Due to that accident, victim got multiple severe injuries on his person and the victim Gopal Das @ Chhotan Das died on the way to Balurghat hospital. Thereafter, postmortem examination over the dead body of victim has been done at the said hospital.

2a. As per the claim petition, due to rash and negligent driving by the driver of the vehicle bearing no. WB-61/7450 (Trekker), the accident occurred as a result of which the victim Gopal Das @ Chhotan Das succumbed to his injuries and the driver of the vehicle was sole responsible for that accident. It is also stated in the claim petition that the

victim was a man of active habits and good health. He used to earn regularly from his occupation and used to contribute the entire amount towards the expenses of his family. The claimants were fully dependent upon the income of the victim. Due to the premature and pathetic death of the victim, the applicants have sustained great financial loss and mental pain and agony and will have to suffer throughout their lives.

2b. The age of the victim was 18 years, by occupation he was a businessman and his monthly income was Rs. 3,300/-. It is also the case of the present claimants that one Basudev Dutta was the owner of the vehicle and that said vehicle was insured under the Oriental Insurance Co. Ltd. at the relevant time. The claimants have claimed a compensation amounting to Rs. 4,00,000/- only.

2c. In this case, the owner of the offending vehicle bearing No. WB-61/7450 (Trekker), namely, Basudev

Dutta, the O.P. No. 1 after receiving summons of this Court did not contest the case. So, the instant case is heard ex parte against the O.P. 1, the owner of the offending vehicle.

2d. The opposite party no. 2/Oriental Insurance Company has contested the case by filing written statement, wherein said O.P. No. 2 has denied all the material allegations and contentions made by the claimants/petitioners in the instant case and submitted that this opposite party is not liable for any compensation for the alleged accident as claimed.

2e. It is further stated by the O.P. No. 2 that the petitioner no. 2 is not legal heir of the deceased and not dependent upon him and not entitled to file the case and not entitled to get any compensation. The petitioner no. 1 Parbati Das is aged about more than 51 years and she has to prove her case. Both parties adduced evidence before the Learned Tribunal. The case falls under 'no fault liability.'

The claimants have to prove only the involvement of the offending vehicle and accident in which the victim suffered injury and subsequently succumbed to such injury. After considering the case of the parties as well as appreciation of evidence, the learned Tribunal finally, awarded the compensation amounting to tune of Rs. 1,64,500/- and that should be paid only to the petitioner No. 1, namely, Parbati Das, within 2 months from the date of passing award along with interest @ 8 % per annum from the date of filing of the case.

3. As per new amendment, when a person died due to motor traffic accident, claimant or claimants is/are entitled to get Rs. 5,00,000/- as lump sum amount of compensation as it has given retrospective effect.

4. The learned advocates appearing on behalf of the appellants referred two decisions. Firstly, passed by Division Bench of this Hon'ble Court in **Urmila Halder vs.**

New India Assurance Co. Ltd. & Ors. (FMA 446 of 2010)¹

wherein the Division Bench of this Court has held that total sum of Rs. 5,00,000/- in a fatal accident falls under Section 163A of the Motor Vehicles Act, 1988 should be paid. It has retrospective effect though the amendment has come into effect on and from 22nd May, 2018 as such application pending prior to the amendment shall have retrospective effect.

Secondly, a judgment passed in **New India Assurance Co. Ltd. -vs.- Urmila Halder** in **Special Leave Petition (Civil) No. 6260 of 2019**, The Hon'ble Supreme Court has affirmed the view taken by this Court and further held as under:

“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

¹ **2018 SCC Online Cal 11751, 2019 (2) TAC 143 (Cal)**

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 Rs.5,00,000/= (Rupees Five lakhs).”

5. This instant appeal is squarely covered by the judgment of the Hon’ble Supreme Court passed in **The New India Assurance Co. Ltd Versus Urmila Halder** in **Special Leave Petition (Civil) No. 6260 of 2019**. Hence, the claimants are entitled to get a fixed compensation of Rs. 5,00,000/- on account of death caused by Motor Vehicle Accident as there is no dispute about the involvement of the vehicle and the death of the victim was caused due to accident as claimed and proved. There is also no dispute about the validity of Insurance Policy of the offending

vehicle with the Respondent No. 1/Insurance Company on the date of accident.

6. It is submitted by learned advocate appearing on behalf of the Oriental Insurance Company that the compensation allowed by the Learned Tribunal has already been received by the claimants. Accordingly, appellants/claimants are entitled to get enhanced compensation amount (Rs. 5,00,000/- minus 1,64,500/-) to the tune of Rs. 3,35,500/= (Rs. Three Lakhs Thirty-Five Thousand and Five Hundred only) which shall carry interest @ 6% per annum from the date of filing of the claim application till final payment.

7. The respondent no. 1/Insurance Company is directed to pay the enhanced compensation amount together with interest as indicated above by way of cheque before the Office of Learned Registrar General, High Court, Calcutta within a period of six weeks from this date.

8. Learned Registrar General, High Court, Calcutta, upon deposit of the enhanced compensation amount together with interest on the awarded compensation amount as indicated above, shall release the amount in favour of the appellants/claimants in equal share to the appellants/claimants upon proper identification and subject to verification of the payment of ad valorem Court fees on the total compensation amount, if not already paid.

9. With the above observations, the instant appeal being **FMA 3535 of 2016** is, thus, allowed after modifying the impugned judgment and award dated 22nd day of September, 2015 to the extent as aforesaid without order as to costs. Connected applications, if any, are also, thus, disposed of.

10. Let a copy of this Judgment along with Lower Court Records, if any, be sent back to the learned Court below forthwith for information.

11. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

12. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)