

22.4. 2024
item No.219
n.b.
ct. no. 551

FMA 841 of 2019
with
IA No. CAN 1 of 2019 (Old No. CAN 2143 of 12019)

Badal Maiti & Ors.
Vs.
The National Insurance Company Ltd.

Mr. Amit Ranjan Roy,
.... For the appellant.
Mr. Deb Narayan Ray,
.... For the respondent.

The instant appeal has been preferred against the judgment and award dated 5th December 2018 passed by the learned Tribunal, Fast Track, 1st Court, Tamluk Purba Medinipur in the Motor Accident Claim case No. 29 of 2017.

The brief fact of the case is that the victim of this case namely, Khuku Maity was travelling as a passenger through a tourist bus to Puri being registration no. WB 29A/2999 through N. H. 5 and while the said bus reached near Jamijhadi under P. S. Simulia in Balasore District, the bus stopped and parked by the side of the road. At the time suddenly the offending vehicle being registration no. OR 05 AG 8341(truck) which was coming from Balasore side with terrific high speed and dashed the back side of the tourist bus along with other tourist. By the impact of such accident the offending vehicle capsized and

the victim expired on spot. The legal heirs of the deceased filed an application under Section 163A of the M.V. Act before the learned Tribunal for getting compensation on the ground that the victim died due to involvement of vehicular accident. The insurance company contested the claim case by filing written statement also with a leave under Section 170 of the M.V. Act.

After hearing the parties and after considering the evidence on record, the learned Tribunal has awarded a sum of Rs.3,66,000/- by adopting the stricture formula, as compensation and directed by the insurance company to pay the compensation. The insurance company has satisfied the award passed by the learned Tribunal.

The claimants being aggrieved by and dissatisfied with the said award has preferred the instant appeal for enhancement of the award.

Mr. Roy, learned advocate submits that the award passed by the learned Tribunal is not in conformity with law of the land as enumerated by the Hon'ble Apex Court in ***Urmila Halder Vs. New India Assurance Company Limited.*** He further argued that the Hon'ble Division Bench of this Court has held that the notification dated May 22, 2018 in respect of application under Section 163A of the M.V. Act will have a retrospective effect. The same view was challenged by the insurance company before the Hon'ble Apex Court, wherein Hon'ble Apex Court has affirmed the observation of the Hon'ble Division

Bench. Accordingly, he submits that the fixed compensation of Rs.5,00,000/- is required to be awarded by the learned Tribunal, in this case, by virtue of notification dated May 22, 2018.

Mr. Roy, learned advocate appearing on behalf of the Insurance Company submits that the insurance company has already satisfied the award passed by the learned Tribunal. Now, the appeal preferred by the claimants is fruituous.

Mr. Roy, learned advocate further argued that the observation of the Hon'ble Supreme Court in Urmila Halder (supra) has been well-founded and was followed by this Court on several occasions.

Heard the learned advocates and perused the impugned judgement passed by the learned Tribunal; it appears to me that the law of the land has been settled by several decisions of this Court by following observation of Hon'ble Supreme Court in Urmila Halder (supra). The Hon'ble Supreme Court has also guided that the claimants under Section 163A of the M.V. Act where death has been caused, the fixed amount has of compensation of Rs.5,00,000/- has to be awarded. Following of such observatin, the Hon'ble Supreme Court, in this case, it appears that the learned Tribunal has committed error by awarding only Rs.3,66,000/-. The award is modified and enhanced to the amounts of Rs.5,00,000/-.The balance award comes to Rs.1,34,000/-.

The insurance company is directed to pay the balance awarded amount together with 6% interest from the date of filing of the claim application i.e. from 16.11.2012 till the date of actual payment.

The insurance company is further directed to comply the order through the office of the learned Registrar General, High Court, Calcutta within a period of six weeks.

The claimants are at liberty to receive the same equally from the office of the learned Registrar General, High Court, Calcutta according to the prevalent rules of identification and certification.

The award of compensation is subject to the ascertainment of payment of deficit court fees if any.

The learned Tribunal shall act upon the certified copy of this order if deposit the court fees.

LCR be returned at once through Special Messenger cost to be borne by the appellant. The appellant is directed to deposit the Special Messenger cost within a week.

Accordingly, FMA 841 of 2019 stands disposed of.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)

