19.08.2024
Aloke
ct no. 30
sl no. 10

FMA 3671 of 2016

Tarun Mukhopadhyay & Anr.

Vs.

The United India Insurance Company Ltd. & Anr.

Mr. Jayanta Banerjee,
Mr. Sandip Bandyopadhyay,
Ms. Rukmini Basu,
Mr. Argha Bhattacharya.
.... **For the Appellants**

Mr. Rajesh Singh.
.... **For the Respondent No. 1/ Insurance company**

None.
...... **For the Respondent No. 2/ Owner**

1. The present claim appeal has been preferred by claimants/appellants against the Judgment and Award dated 30.11.2015 passed by the learned Judge, Motor Accident Claims Tribunal-cum-Additional District Judge, Diamond Harbour, South 24 Parganas, in M.A.C. Case No. 49 of 2015, **under Section 163A of the Motor Vehicles Act, 1988.**

2. The facts of the case in short is that:-

> *The instant application for compensation under Section 163A of the M.V. Act has been filed by the parents for the demise of their minor son aged about 6 years in a R.T.A. on 27.12.2014 when he was staying with his grandmother by the road side field near Ukiler Hat, Bamunpara. One motor cycle being no.*

> *K.L. 7039 came in a rash and negligent manner and dashed the said victim boy and his grandmother, as a result they fell down and the child sustained severe internal hemorrhage. He was taken to the nearby Kakdwip Hospital for treatment and thereafter to S.S.K.M. hospital, but he expired on the same day. Accordingly, by filing the claim case, the petitioners prayed for compensation to the tune of Rs.3,00,000/- lakhs.*

3. The O.P./Insurance Company viz. The United India Assurance Co. Ltd. contested the case by filing written objection contending inter alia that no cause of action arose against the O.P. 2. The compensation petition is defective, incomplete and suppressing the material facts. They also disputed and denied the petitioners case.

4. The owner neither appeared nor filed any written objection. The insurance company obtained permission to contest the case on the grounds which are available to the O.P. 1 u/s. 170 of M.V. Act.

5. The claimants examined the father of the deceased as P.W. 1 and proved relevant documents which were marked as Exhibit 1 to 9.

6. The learned Tribunal finally granted compensation as follows :-

> ***"MACC NO. 49 of 2015***
>
> ***Dated:-30th November, 2015***
>
> *…………..Considering the said submission and perusing the evidence it is to be submitted that the age of the deceased as six, the multiplier would be 15 and in absence of any income the income would be 15000 per annum to which half of such income*

is to be considered as personal expenses and rest are family contribution. Accordingly, the award will be 7,500 X 15. Apart from that the petitioners are not entitled to get any other amount. There is no delay on the part of Insurance Company. As such I do not like to pass any order towards interest. Accordingly the compensation would be Rs.7,500 X 15 = Rs.1,12,500/-..................

Sd/-
Tribunal Judge, MAC Case
Addl. Dist. Judge,
Diamond Harbour
South 24 Pgs."

7. The present case has been preferred **under Section 163A of the Motor Vehicles Act.** The incident in the present case has been proved and the death of the victim in the present case has also been proved that he died out of the injuries received as a result of the accident in the present case.

8. (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."*

9. **In the present appeal,** the claim was decided by the tribunal on 30th November, 2015, thus prior to 22nd May, 2018 and compensation of a sum of **Rs. 1,12,500/-** was granted in terms of the old schedule.

10. **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 Appellants/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.**

11. Admittedly, the **Appellants/Claimants** have already received an amount of compensation of **Rs. 1,12,500/-** in terms of order of the Learned Tribunal. Accordingly, the **Appellants/Claimants** are now entitled to the balance amount of compensation of **Rs. 3,87,500/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

12. **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/ Insurance Company,** shall also pay the interest upon

the **sum of Rs. 3,87,500/-** at the rate of 6% till deposit, within the period as specified above.

13. Upon deposit of the aforesaid amount along with interest, learned Registrar General, High Court, Calcutta shall release the amount in favour of the **Appellants/Claimants**, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.

14. **The appeal being FMA 3671 of 2016 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.**

15. No order as to costs.

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

17. Interim order, if any, stands vacated.

18. Copy of this order be sent to the Learned Tribunal, along with the trial court records, if received.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)