

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA No. 799 of 2010

Hena Bibi & Ors.

Vs

National Insurance Co. Ltd. & Ors.

For the Appellants : Mr. Saidur Rahaman.

**For the Respondent No.1/
Insurance Company** : Mr. Parimal Kumar Pahari.

**For the Respondent No. 2 & 3/
Owner** : None.

Hearing concluded on : 14.08.2024

Judgment on : 24.09.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the claimants against the judgment and order dated 16.09.2008 passed by Judge, Motor Accident Claims Tribunal, 2nd Court, Murshidabad at Berhampore, in M.V. Case No. 294 of 2004, **under Section 163A of the Motor Vehicles Act.**

2. THE FACTS :-

“.....Ruddin Sk S/o Nasir Sk. boarded truck No. WB -65/1328 (Mini Truck) with his fruits for his business purpose and started from Sajur More to Omarpur on 18.06.2003. That truck was running rashly and negligently with high speed violating the rules and regulations of the law and the truck fell down in Nayanjuli at about 9-30a.m. and the said Ruddin Sk received fatal injury and he was at first admitted to Jangipur S.D. Hospital from there he was transferred to Berhampore N.G. Hospital where he died at about 12.45 p.m. on 18.06.03. His earning was Rs. 4000/- per month from his Fruit Business. The deceased's family suffered financially. The deceased Ruddin Sk was aged about 40 years and he was a resident of Dhulian, P.S. Samserganj, Dist. Murshidabad. The petitioner No.1 Rabina Bewa is the wife of late Nasir Sk. father of deceased and petitioner No. 2 Rojina Bibi D/o Ruddin Sk and petitioner No.11 Hena Bibi, W/o Ruddin Sk and others are minor issues etc. The accident took place on 18.06.03 at 9.30 a.m. on NH 34 after crossing Gadaipur bridge under PS – Raghunathganj, District -Murshidabad. The police Case No. 91/03 (connection with Berhampore PS UD Case No. 349/03 of 18.06.03) u/s 279/304A IPC was started. So, the petitioners have filed this case praying for compensation of Rs. 2 Lakhs.....”

3. **O. P. No. 2/the Insurance Company** submits that the deceased was not a citizen of India and the petitioners are not citizens of India, as no ration card and voter I-Card have been filed by the petitioners in

proof of their identity and also the relationship between the parties and the deceased. So, the case is not maintainable even though the FIR and the charge sheet show that the deceased was a passenger and he was travelling as a passenger in the said vehicle and that no case of carrying fruits have been made out in the claim petition and he was travelling as a gratuitous passenger along with other persons/victims.

4. The claimants examined **three witnesses** and proved documents marked **Exhibit 1 to 5.**
5. **Being aggrieved, the Claimants preferred this appeal on the ground :-**

That the learned Tribunal did not grant 'just compensation' in spite of the materials on record.

6. **Considering the materials on record, the tribunal held as follows:-**

"..... M.V. Case No. 294 of 2004

Dated: 16.09.2008

..... Ext. 1, the post mortem report says the name of the deceased as Ruddin Sk S/o Naser Sk. But Ext. 4 (FIR) and Ext.5 (Charge Sheet) show the name of the deceased as Azizul Sk and so there is clear contradiction in between Ext.1 and Exts.4 and 5. No documents have been filed to show that the petitioners had any relationship with the deceased. No voter I-Card and Ration Card have been filed to prove the same without any explanation and that also goes against the petitioners' case very much. In this case income has also not been proved.

PW-2 says that three passengers were in the truck and the truck capsized and they were injured seriously. He also says that they were not known to him (vide line Nos. 6 of his examination in chief). He

says regarding Ruddin Sk. But Exts. 4 and 5 say otherwise. He says that he had a tea stall but that has not been proved and he has no document to prove it. He has also not filed his voter I-Card to show his identity. It is suggested to him that he is a tutored witness but it is denied by him. He is not a charge sheet witness. On perusal of his evidence I find that he can not be relied upon.

PW3 Sagir Sk. says that Ruddin Sk and Azizul Sk were admitted in hospital and Ruddin Sk is dead and he died in hospital. But Ext. 4 copy of FIR does not show that Ruddin Sk died in the accident and Ext. 4 does not contain the name of Ruddin Sk at all. Ext.5 certified copy of charge sheet also does not contain the name of Ruddin Sk and it does not show that Ruddin Sk died in the accident. So, Exts. 4 and 5 go very much against the petitioners' case.

The evidence of PW3 and that of other P.W.s are contradictory. The evidence of PW-3 does not help the petitioners at all. Exts.1 to 6 do not help the petitioners at all. In this case petitioners have not been able to file any papers and documents to show the relationship in between them and also to show their relationship with deceased.

On perusal of the record and considering the Rulings of both sides and on the basis of oral and documentary evidence, I find that the petitioners have not been able to prove their case at all. They are not entitled to get any compensation as prayed for.

So, the case falls on contest. C.F. paid is correct.
Hence it is,

Ordered

that the M.V. Case No. 294/04 **is dismissed** on contest against the O.P. 2 National Insurance Co. Ltd. and exparte against the rest but without costs.

Dictated & corrected by me.

**Sd/-
Judge,
Motor Accident Claims
Tribunal, 2nd Court,
Murshidabad.....”**

7. From the materials and evidence on record, the following is evident :-

- (i) The tribunal held that **Exhibit 5 (charge sheet)** does not name the deceased. The said finding is clearly erroneous, as the deceased in this case 'Ruddin Sk' was among the others travelling in the offending vehicle and sustained injuries of which he also expired. The FIR has been registered by the son of one of the other victims Azizul Sk. The fact as stated in the **Charge Sheet** is as follows :-

*".....On investigation, seized the truck and its papers examined witnesses and recorded U/S 161 Cr.P.C., arrested driver accd. forwarded him to court, M.V.I. examined the truck. Other persons also sustained injury who were also got admission at Jangipur S.D. Hospital. One **Ruddin Sk** transferred to Berhampore N.G. Hospital from Jangipur S.D. Hospital where he also **expired**. This relates to Berhampore P.S. U.D. case No. 349/03 dated 28.06.03. A.S.I. Sourendra Nath Biswas attended and held inquest over the dead body and sent for P.M. examination, collected P.M. report, injury report. Thus I investigated the case on all over the point.*

Prima facie Charge U/s 279/337/338/304A I.P.C. have been well established against accd. Md. Sagir Sk....."

- 8. Exhibit 1** is the post mortem report of deceased Ruddin Sk. and relates to the accident in the present case (RTA).
- 9. The address of Ruddin Sk. in the P.M. report (Ext-1) is Lalpur, P.O. Dhulian, P.O. Samserganj, Murshidabad. The address of the claimants is also the same.**
- 10. The claimants have filed their Aadhar Cards to show the address shared with the deceased.**

11. The victim was admittedly travelling in a mini truck and was thus a **'Gratuitous Passenger'**.
12. The present claim is under **Section 163A M.V. Act.**
13. The exhibited documents support the case of the claimants that the deceased Ruddin Sk was also a passenger in the offending vehicle and died as a result of the accident in this case.
14. (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.”*

- 15. In the present appeal,** the claim was decided by the tribunal on 16th September, 2008, thus prior to 22nd May, 2018 and no compensation was granted by the Learned Tribunal as the case was dismissed.
- 16. Now, considering the evidence on record and 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.**
- 17. Admittedly, the Claimants/Appellants** have not received any amount of compensation in terms of order of the Learned Tribunal as the case was

dismissed. Accordingly, the **Claimants/Appellants** 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.**

18. **Respondent No. 1/Insurance Company**, is thus directed to deposit the total amount along with 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.
19. 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 in equal proportion, **after payment** of the amount for loss of consortium to the Appellant/Wife, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.
20. The **Respondent No.1 /Insurance Company** has now prayed for leave to recover the compensation from the **Owner/Respondent No. 2 & 3** of the offending vehicle (being a Mini-Truck) bearing no. **WB -65/1328** (insured with the Respondent No.1) on the ground that the deceased was a **gratuitous passenger** in the said vehicle. (*Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors., in SLP (C) No. 33638 of 2017, on 3rd November, 2022, Para 8 to 14*)
21. **It is proved from the charge sheet (Exbt. 5)** that the deceased was travelling as a **gratuitous passenger** in one of the offending vehicles

being a Mini-Truck, bearing No. **WB-65/1328**, insured with the **Respondent No.1/Insurance Company** and thus there being a violation of the condition of the rules in the policy, the **Respondent No.1/Insurance Company** is entitled to recover the compensation paid, **by due process of law** from the owner of vehicle no. **WB -65/1328**, the **Respondent no. 2 & 3** herein.

22. The appeal being FMA 799 of 2010 is allowed. The impugned judgment and award of the learned Tribunal is set aside.

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

24. There will be no order as to costs.

25. Interim order, if any, stands vacated.

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

27. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)