

16.04.2024
SL No.1 & 2
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**F.M.A. 1725 of 2019
With
IA No.:CAN1/2019 (Old No.:CAN/10522/2019)
National Insurance Co. Ltd.
Vs.
Dipa Roy
With
COT 33 of 2020
Dipa Roy & Ors.
Vs.
National Insurance Co. Ltd.**

Mr. Parimal Kr. Pahari
.....for the appellant-insurance Co.

Mr. Jayanta Kumar Mondal,
Mr. Sayantan Rakshit,
Ms. Nahid Parvin
.....for the respondents-claimants.

The instant appeal has been preferred against the judgment and award dated 16th August, 2019, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, 1st Court, Barasat, 24-Parganas (North), in MAC Case no. 3850 of 2014.

The brief fact of the case is that on 17th October, 2009 at 12.30 p.m. the victim, namely, Somnath Roy and other co-workers were boarded on bus bearing No. AS-01Q-8799 (Super Bus) at Rathbari, near New Oil Pump (Depot), on the way from Guwahati to Agartala, and when the said (Super Bus) reached near Esser Petrol Pump, the above bus hit with another truck bearing No. T.R. 01-1866, face to face. By such accident the victim

sustained injuries and admitted to Guwahati Medical College and Hospital, thereafter brought to Kolkata by Air, admitted in S.S.K.M. Hospital, thereafter, shifted to N.G. Nursing Home, Kolkata again taken to Christian Medical College and Hospital, Vellore but he succumbed to his injuries on 13th January, 2009.

The heirs of the deceased filed an application before the learned tribunal under Section 163-A of M.V. Act for getting compensation.

The Insurance Company i.e. the insurer of (Super Bus) contested the claim case by filing written statement.

The learned Tribunal after hearing the parties and after receiving the evidences has awarded a sum of Rs.5,74,000/- together with @ 5% interest per annum towards the compensation in favour of the claimants and directed the Insurance Company to pay the compensation.

Being aggrieved by and dissatisfied with the said award the Insurance Company has preferred the instant appeal.

The claimants also preferred one cross appeal being COT 33 of 2020 for enhancement of the compensation.

Let the appeal along with COT be taken up together for uniformity of the decision.

Learned advocate Mr. Parimal Kumar Pahari appearing on behalf of the Insurance Company submits that the award passed by the learned Tribunal is erroneous. The award under Section 163-A of M.V. Act is covered by the decision of Hon'ble Apex Court passed in ***New India Assurance Company Ltd. Vs. Urmila Halder***. The Hon'ble Apex Court has guided that the application filed under Section 163-A of M.V. Act prior to the amendment of 163-A of M.V. Act i.e. May 22, 2018, a fixed amount of compensation amounting to Rs.5,00,000/- has to be awarded in a fatal accident. In this case, he further argued that the observation of Hon'ble Apex Court has affirmed the decision of Division Bench of this Court passed in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.*** He submits that the learned Tribunal should have awarded a compensation of Rs.5,00,000/- and he prayed for necessary modification of the award.

Learned advocate Mr. Parimal Kumar Pahari appearing on behalf of the Insurance Company submits that the law has been settled by the decision of Hon'ble Apex Court in ***New India Assurance Company Ltd. Vs. Urmila Halder*** so necessary order may be passed.

He further argued that, the case of the claimant has justified the fact that there are facts to

face accident between two vehicles bearing No. AS-01Q-8799 (Super Bus) and another truck bearing No. TR 01 1866. He further submits that the investigation of the police ended in charge-sheet. The I.O. is of opinion that both the vehicles are jointly involved and responsible for the accident. So, in this case the insurer of the bus i.e. the present appellant is not solely responsible to pay the entire compensation. He further submits that the claimants have not made the owner/insurer of the other vehicle as a party to this proceeding. Thus, the entire claim case is liable to be dismissed.

Mr. Mondal, learned advocate appearing on behalf of the claimants submits that the observation of Hon'ble Apex Court in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.*** was well accepted by this Court on several occasions and it has been already decided by the Hon'ble Apex Court in a case under Section 163-A of M.V. Act, where death has been taken place, the fix compensation would be Rs. 5,00,000/-.

He further argued that not making a party of the other vehicle in the instant proceeding has been raised before the learned tribunal by the Insurance Company. Learned tribunal has decided the issue by virtue of decision of the Apex Court reported in **2015 (2) TAC 667 (S.C.)** that the claimants are

entitled to get the compensation from any of the vehicles. Thus the claim is quite maintainable.

Heard the learned advocate perused the materials on records also perused the impugned judgment passed by the learned tribunal. It appears to me that the learned tribunal has adopted the structure formula in awarding the compensation. By virtue of decision of Hon'ble Apex Court in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.*** the impugned award in a case under Section 163-A of M.V. Act, appears to me not proper.

The observation of Hon'ble Apex Court in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.*** as reflected at paragraph 10 of the decision of Hon'ble Apex Court is required to be set out as follows:-

“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 Rs. 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”.

So, after considering the opinion of the Hon'ble Apex Court in ***Urmila Halder (supra)***, it appears that the prayer of reduction of compensation by the appellant is required to be answered in affirmative.

In this case, considering the same, the award passed by the learned Tribunal is hereby modified.

The just and proper compensation in this case would be Rs.5,00,000/-. The claimants are also entitled to get simple interest upon the said compensation @ 6% interest per annum from the date of filing of the claim application.

In considering the fact that both the vehicles are involved in the said accident; it is observed that the Insurance Company i.e. the National Insurance Co. Ltd may prefer a separate suit or proceeding impleading the owner/insurer of the truck bearing No. TR 01 1866 to recover the 50% of the awarded sum from the said insurer. I make it clear that the merits and findings of the instant appeal will have no effect in determining the separate case filed by the National Insurance Co. Ltd. against the other

insurer or the owner of the vehicles bearing No. AS-01Q-8799 (Super Bus) and No. TR 01 1866.

It further appears that the Insurance Company has deposited the statutory sum of Rs. 25,000/- at the time of filing of the instant appeal. The Insurance Company is at liberty to return back the same from the office of the learned Registrar General, High Court, Calcutta along with accrued interest.

The National Insurance Co. Ltd. is directed to pay the fixed compensation amounting to Rs.5,00,000/- together with 6% interest from the date of filing of the claim application i.e. from 05.01.2010 to the claimants through the office of the learned Registrar General, High Court, Calcutta within six weeks. After such deposit the claimants are at liberty to receive the same equally on usual terms and conditions subject to ascertainment of payment of deficit Court Fees, if any.

The office of the learned Tribunal shall act upon the certified copy of this order to receive the deficit court fees, if any.

The instant **FMA 1725 of 2019** along with **COT 33 of 2020** are disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)