

16.04.2024
SL No.3
Court No. 551
Ali

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

F.M.A. 294 of 2022

**Smt. Angurbala Maiti @ Angurbala Maity
Vs.
The New India Assurance Co. Ltd. & Anr.**

Mr. Jayanta Kumar Mondal
.....for the appellant/claimant.

Mr. Sanjay Paul
.....for the Insurance Co.

The instant appeal has been preferred against the judgment and award dated 27th day of September, 2019, passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Tamluk, Purba Medinipur, in MAC Case no. 458 of 2016.

The brief fact of the case is that on 25.08.2016 in between 11.30-12.00 hrs. the victim of this case, namely, Shibu Maity was proceeding through the left side of NH-512 by riding one motor cycle bearing regd. No. WB-30R/1322 from Malda side to Buniadpur side and when he reached at Saraihat under PS-Banshihari at that time, suddenly one heavy goods vehicle bearing regd. No. WB-65B/5525 coming from opposite direction dashed the victim with his motor cycle. As a result the victim sustained serious injury all over the body and he was taken to Rashidpur BPHC, Dakshin Dinajpur where the doctor declared the victim brought dead.

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

The claim case was contested by the Insurance Company by filing written statement.

The learned Tribunal after hearing the parties and after receiving the evidences has awarded a sum of Rs.3,94,000/- together with @ 6% interest per annum from the date of filing of the claim application as compensation of this case and directed the Insurance Company to pay the compensation.

The Insurance Company has satisfied the award through the office of the learned tribunal.

Being aggrieved by and dissatisfied with the said award the claimant has preferred the instant appeal for enhancement of the award.

Learned advocate Mr. Mondal appearing on behalf of the claimants submits that the award passed by the learned Tribunal is not in accordance with the law laid down by the Hon'ble Apex Court in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.*** He submits that the Hon'ble Apex Court passed in ***New India Assurance Company Ltd. Vs. Urmila Halder*** 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 fix compensation of Rs.5,00,000/- and he prayed for necessary modification of the award.

Mr. Paul, learned advocate appearing on behalf of the Insurance Company raised strong objection and submits that the claimants has already received the compensation from the office of the learned tribunal and the Insurance Company has complied the order of the learned tribunal. Now the appeal preferred by the claimants is not maintainable. However, Mr. Paul further argued that the observation of Hon'ble Apex Court in ***Urmila Halder*** is well accepted and this Court has also decided several matters by virtue of decision of Hon'ble Apex Court.

Heard the learned advocates 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.

The observation of Hon'ble Apex Court in

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& 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”.

It appears to me that the learned tribunal has passed the award on 27th day of September, 2019 the amendment has taken place vide Notification dated 22nd May, 2018 so the learned tribunal must have adopted the guidelines of the said amendment. However, in considering the opinion of the Hon'ble Apex Court in ***Urmila Halder (supra)*** it appears to me that the award passed by the learned tribunal requires enhancement.

In this case, the death has been caused due to the vehicular accident. So, the claimant is entitled to get the fixed compensation amounting to Rs. 5,00,000/- alongwith @ 6% interest per annum. It appears that the Insurance Company has already satisfied the awarded compensation amounting to Rs. 3,94,000/- so the balance award comes to Rs.1,06,000/-.

The Insurance Company is directed to pay the balance awarded sum amounting to Rs. 1,06,000/- together with @ 6% interest per annum from the date of filing of the claim application i.e. from 22.09.2016 till the payment through the office of the learned Registrar General, High Court, Calcutta.

The Insurance Company is further directed to comply the order within six weeks from the date of passing of this order. After such deposit the office of the learned Registrar General, High Court, Calcutta shall allow the claimants to withdraw such amount 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 294 of 2022** is 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.)