

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMAT 992 of 2005

With

CAN 1 of 2024

With

CAN 2 of 2024

Smt. Neoti Debnath & Anr.

Vs.

Oriental Insurance Co. Ltd. & Anr.

For the Appellant : Mr. Krishanu Banik.

**For the Respondent No.1/
Insurance Company** : Mr. Rajesh Singh,
Mrs. Sucharita Paul.

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

Hearing concluded on : 19.09.2024

Judgment on : 19.09.2024

Shampa Dutt (Paul), J.:

Re: IA No.: CAN 1 of 2024

1. **IA No.: CAN 1 of 2024** is filed praying for amendment of the name of the appellant no.1 as also for amendment of the address of the appellant nos.1 and 2. On hearing both side IA No.: CAN 1 of 2024 stand allowed, the same being formal in nature.
2. Let the name of the appellant no.1 and address of the appellant nos. 1 and 2 be amended.
3. Necessary note may be made immediately in the cause title.
4. **IA No.: CAN 1 of 2024 stands disposed of.**

Re : IA No.: CAN 2 of 2024

5. **IA No. CAN 2 of 2024** is filed praying for condonation of delay in preferring the appeal.
6. Considering the grounds as made out and in the interest of justice, delay is condoned.
7. **IA No.: CAN 2 of 2024 stands disposed of.**
8. The present appeal has been preferred by the Claimants/Appellants against the Judgement and Award dated **30th day of September, 2004** passed by the learned Judge, Motor Accident Claims Tribunal, Durgapur, Burdwan (hereinafter called as the Learned Tribunal Judge) in M.A.C Case No.62 of 2002, **under Section 163A of the M.V Act.**

9. **Facts :-**

“.....On 16.09.1999 at about 6 p.m. the victim along with Sanjib was proceeding by a by-cycle along kanccha portion of the link Road near Rabindra-Pally and at material time the lorry bearing No.WGH-9016 was proceeding at a terrific high sped recklessly endangering human life and safety of the others and dashed against the victim Sanjit Mukhopadhyay @ Sanjib Mukherjee and Ripan Debnath as a result they sustained injuries and caused their death. The driver of the vehicle was driving the said lorry rashly and negligently which caused such accident. Police started a criminal case against the driver of the said vehicle under Section 279/304A of I.P.C. It is stated in the petition that Ripan Debnath was aged about 18 years at the time of the accident and death. It is also stated in the petition that he used to earn Rs.3,000/- per month. He was taken to Bidhannagar Hospital for examination. The owner of the said vehicle is Sanjoy Yadav of Durgapur Akbar Road, Burdwan and the Insurance of the said offending vehicle is with Oriental Insurance Company Limited, Uma Bhaban, Asansol, Cover Note A-3-AL-054146 dated 30.10.98 issued by Durgapur Divisional Office.

The petitioners claim compensation of Rs.3,00,000/.....”

- 10.** The Opposite Party/Oriental Insurance Company filed W.S and Additional W.S denying the claim of the petitioners. It is stated therein that the claimants have no cause of action to file this claim petition against the Oriental Insurance Company Limited. The claim petition is vague and defective and it has not been filed according to the provision of M.V. Rules, 1989. The accident took place on 16.09.1999 and the FIR was lodged on 19.09.1999. The delay of lodging the FIR, raises doubt. So, it is not maintainable in the eye of law. The claimants have not produced the Birth Certificate, to prove the age of the victim. There is no document to prove the monthly income of Rs.3,000/- of the

deceased. They denied that the lorry No.WGH-9016 was proceeding at a high speed recklessly endangering human life and safety. The victims were going by bi-cycle along with Kancha portion of the Link Road and for their own laches the accident took place. So the O.P No.2 is not liable to pay any compensation to the claimants. The driving licence of the driver is not legal and valid. The Route Permit, certificate of registration, Insurance Policy etc. are to be proved.

11. They have also filed additional W.S stating therein that the Insurance Company applied for information regarding the D.L of the driver of the offending lorry and on verification, a report was received from RTA Godda. It is found that the D.L. No.12393/97/Prof. as mentioned in the D.L. is fake. So, the Insurance Co. has no liability to pay compensation for the said accident to the claimants.
12. The claimants examined **four witnesses** and proved relevant documents which were marked as **Exhibit-1 series**.
13. The opposite party/Insurance Company examined only one witness.
14. **The Tribunal considering the materials on record finally held as follows :-**

“.....M.A.C Case No.62 of 2002

Dated: 30th day of September, 2004

.....As per Schedule ‘B’ multiplier should be calculated considering the age of the victim and the multiplier in between age of 15 years to 20 years should be 16. So, the compensation should as per account of the learned counsel for the Insurance Company Rs.10,000/- x 16=Rs.1,60,000/-. As such the amount of compensation should be Rs.1,60,000/-.

In the conclusion the petitioners have proved the claim case and they are entitled to get compensation of Rs.1,60,000/-.....

**Sd/-
Judge
Motor Accident Claims Tribunal, Durgapur.....”**

15. Being aggrieved the Appellants/Claimants has preferred the present appeal on the ground:-

That the learned tribunal did not grant ‘just compensation’ to which the claimants are entitled as per law.

16. Considering, the materials including the evidence on record, the following is evident:-

- i) It is seen that the deceased was the son of the claimants.*
- ii) Offending vehicle is a Lorry bearing No.WGH-9016.*
- iii) The deceased was aged about 18 years and he died as a result of the accident in the present case.*
- iv) The claimants have stated that the deceased was a supplier of goods, thus self employed.*
- v) The deceased was a Bachelor.*
- vi) The witness on behalf of the Insurance Company as DW-1 has submitted that Exhibit-A is the document which shows that **the seized driving licence of the driver of the offending vehicle is fake. Document shows that the licence is not a valid licence and it was duly proved before the tribunal.***

- vii) *The offending vehicle was covered with a valid insurance of the Respondent No. 1/Insurance Company at the time of accident.*
- viii) *The learned tribunal considering the materials on record granted compensation of Rs.1,60,000/- in favour of the claimants.*

17. In the present case the appeal was preferred in the year 2005, from the judgement and Award of the tribunal passed in the year 2002. The report of the department dated 06.03.2005 shows that the appeal was defective, being out of time.

18. The application for condonation of delay was filed by the appellant only in the year 2024.

19. Learned counsel for the Insurance Company has relied upon the following judgments:-

a) *Kajal vs Jagdish Chand & Ors., AIR 2020 SC 776*, wherein the Supreme Court held:-

“.....Interest

31. *The High Court enhanced the amount of compensation by Rs 14,70,000 and awarded interest @ 7.5% p.a. but directed that the interest of 7.5% shall be paid only from the date of filing of the appeal. This is also incorrect. We are constrained to observe that the High Court was not right in awarding interest on the enhanced amount only from the date of filing of the appeal. Section 171 of the Act reads as follows:*

“171. Award of interest where any claim is allowed.—Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.”

Normally interest should be granted from the date of filing of the petition and if in appeal enhancement is made the interest should again be from the date of filing of the petition. It is only if the appeal is filed after an inordinate delay by the claimants, or the decision of the case has been delayed on account of negligence of the claimant, in such exceptional cases the interest may be awarded from a later date. However, while doing so, the Tribunals/High Courts must give reasons why interest is not being paid from the date of filing of the petition. Therefore, we direct that the entire amount of compensation including the amount enhanced by us shall carry an interest of 7.5% p.a. from the date of filing of the claim petition till payment/deposit of the amount.....”

b) Kohinur Begum & Ors. vs. New India Assurance Co. Ltd. And

Ors., in FMAT No. 2846 of 2007, decided on 06.03.2008, the

Calcutta High Court held:-

“.....10. In our view, ordinarily, if a claim-application succeeds and the Tribunal comes to the conclusion that any amount of compensation is payable, it should also grant interest on that amount from the date of making of claim-application before the Tribunal unless the Tribunal finds that for the delayed disposal of the claim-application, the claimant himself was responsible and that the grant of interest would be a hardship upon the owner or the Insurance Company who were not responsible for the grant of the delayed relief to the claimants. If knowing fully well that the car involved with the accident was really covered by the insurance and that there was no just reason for contesting the claim on the basis of materials on record, the Insurance Company unnecessarily contested the litigation and ultimately, becomes unsuccessful thereby causing delay in granting the just relief in favour of the claimant, there is no reason why interest should not be granted on the awarded sum. By the delayed disposal, it is the owner of the vehicle or the Insurance Company, the award-debtor, are really benefitted as they had been enjoying and utilising the money ultimately to be handed over to the claimant.....”

20. The present claim is under Section 163A of the Motor Vehicles Act.

21. (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.”*

- 22. In the present appeal,** the claim was decided by the tribunal on **30th day of September, 2004**, thus prior to 22nd May, 2018 and compensation of a sum of **Rs. 1,60,000/-** was granted in terms of the old schedule.
- 23. 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, the victim having died in the accident in this case.**
- 24.** Admittedly, the **Appellants/Claimants** have already received the amount of compensation of **Rs. 1,60,000/-** in terms of order of the

Learned Tribunal. Accordingly, the **Appellants/Claimants** are now entitled to the balance amount of compensation of **Rs. 3,40,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

- 25. Respondent No. 1/Insurance Company**, thus is directed to deposit the balance amount along with 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. 1,60,000/-** at the rate of 6% till deposit if not already paid, within the period as specified above.
- 26.** 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 (2)** in equal proportion, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already deposited.
- 27. The insurance company has proved that the driver of the offending vehicle did not have a valid licence, thus there has been a violation of the policy conditions.**
- 28. The Respondent No. 1/Insurance Company/Oriental Insurance Co. Ltd. has now prayed for leave to recover** the compensation from the Owner/Respondent no. 2 of the offending vehicle (being a Lorry) bearing no. WGH-9016 (insured with the Respondent No. 1) on the ground that the driver of the offending vehicle did not have a valid licence. **(Balu**

***Krishna Chavan vs. The Reliance General Insurance Company Ltd.
& Ors., in SLP (C) No. 33638 of 2017, on 3rd November, 2022)***

- 29. It is proved** that the driver of the offending vehicle (bearing no. WGH-9016, Lorry) did not have a valid licence at the time of accident, though the vehicle had valid insurance with the Respondent No. 1/Insurance Company/Oriental Insurance Co. Ltd. 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. WGH-9016, the Respondent No. 2 herein.**
- 30. The appeal being FMAT No. 992 of 2005 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.**
- 31.** No order as to costs.
- 32.** All connected applications, if any, stand disposed of.
- 33.** Interim order, if any, stands vacated.
- 34.** Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.
- 35.** Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)