IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble **Justice Prasenjit Biswas**

FMA 3714 of 2016
With
CAN 4102 of 2016

Joharlar Rajowar & Anr.

-Versus-

Sriram General Insurance Co. Ltd. & Anr.

Delivered On : **20.12.2024**

Prasenjit Biswas, J:-

1. This appeal is directed against the judgment and award dated 8th October, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 5th Court, Nadia in connection with M.A.C. Case No. 363 of 2010.

2. Being aggrieved and dissatisfied with the impugned judgment and award the appellants/claimants have preferred this instant appeal.

3. It is submitted by the learned Advocates of both the parties that the instant appeal can be disposed of in view of the judgment of the Hon'ble Apex

Court rendered in case of the **New India Assurance Co. Ltd vs. Urmila Halder** in connection with **Special Leave Petition (Civil) No. 6260 of 2019.**

4. The instant claim petition was filed under Section 163A of the Motor Vehicles Act by the claimants being the son and daughter of the deceased Fuleswari Rajowar who faced an unnatural death due to road traffic accident which was happened on 25.05.2010. On the fateful day the offending vehicle bearing registration no. WB-23A/9694 (lorry) was proceeding at a high speed in a rash and negligent manner and dashed against one Tata Sumo being no. W.B. 42J-7659 which was coming from the opposite direction resulting several injuries over the person of the deceased and she died at spot. The claimants have filed the claim application under Section 163A of the Motor Vehicles Act, 1988 praying for compensation to the tune of Rs. 2 lakh for the accidental death of the deceased. The opposite party/insurance company contested the case by filing written statement. Evidences were adduced by both the parties before the Tribunal and after taking into consideration of the evidences, both oral and documentary compensation amount to the tune of Rs. 10,000/- along with interest from the date of filing of this case was awarded in favour of the claimants. The case filed under Section 163A of the Motor Vehicles Act falls under “no fault liability” and the claimants have to prove only the involvement of the offending vehicle and the accident in which the victim suffered injury and subsequently succumbed to those injuries.

5. It appears that although notice of the appeal has been duly served upon the respondent no. 2/owner of the offending vehicle but he did not venture to appear and contest the present appeal.

6. The only point for consideration before this Court is whether amendment in Section 163A 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. Learned Advocate for the claimants submitted that the present appeal is filed with a prayer for enhancement of the compensation awarded to the claimants in view of the amendment made by a gazette notification on 22nd May, 2018 in the Motor Vehicles Act, 1988. The said amendment stipulates that when a person died due to motor traffic accident claimant or claimants is/are entitled to get Rs. 5 lakh as lump sum amount of compensation.

7. Mr. Rajesh Singh, learned Advocate for the Insurance Company has handed over the decision of the Hon'ble Apex Court rendered in the case of the **New India Assurance Co. Ltd. vs. Urmila Halder** (Civil Appeal No. _____ 0f 2024 @ Special Leave Petition (Civil) No. 6260 of 2019). In this case the award of the tribunal was challenged before the Division Bench of this Court wherein the Division Bench held that total sum of Rs. 5 lakh in a fatal accident falls under Section 163A of the Motor Vehicles Act should be paid and it has retrospective effect though the amendment has come into effect on and from 22nd May, 2018. The application pending prior to the said amendment shall have the retrospective effect.

8. The said order passed by the Division Bench of this court was challenged before the Hon'ble Apex Court and the Hon'ble Apex Curt decided the issue and confirmed the decision as made by the Division Bench. It has been held by the Hon'ble Apex Court in case of a **New India Assurance Co. Ltd. vs. Urmila Halder** at paragraph 10 interalia that-

> *"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. Therefore, the inevitable conclusion is that while deciding pending claim/application post May 22, 2018 the new schedule ought to be applied by the Tribunals/Court for determining compensation payable to the heirs/ legal representatives of the victim. In the present appeal the claim was decided by the Tribunal on 8th October, 2015 prior to 22nd May, 2018 and compensation of a sum of Rs10,000/- was granted in terms of the old schedule. So, the claimants are entitled to get fixed compensation of Rs.5 lakh on the account of death caused by the offending vehicle in terms of the guideline of the Apex Court as rendered in case of **Urmila Halder Vs. New India Assurance Co. Ltd and Others**. There is no dispute about the involvement of the vehicle and the death of the victim which was caused due to the accident. There is also no dispute about the validity of the insurance policy of the offending vehicle with the respondent/insurance Company on the date of accident. The accident caused by the offending vehicle and the death of victim are proved in this case and the respondent/insurance company has not disputed the same.

10. It is submitted by the learned Advocate on behalf of the appellant that compensation amount as awarded by the Tribunal has already been received by them. So, the appellants/claimants are entitled to balance amount of compensation to the tune of (Rs.5,00,000/- minus Rs. 10,000/-) Rs.4,90,000/- which shall carry simple interest @ Rs.6% per annum from the date of filing of the claim application till final payment.

11. The respondent no. 1/ insurance company is directed to deposit the balance amount together with accrued interest as indicated above by way of cheque before the office of the learned Registrar General, High Court, Calcutta within a period of one month from this date, failing which the claimants are at liberty to execute the award according to law. Upon deposit of the balance compensation amount together with accrued interest as indicated above by the Insurance Company, the same shall be released in favour of the appellants/claimants in equal share upon proper identification and subject to verification of the payment ad valorem court fees on the total compensation amount if not already paid.

12. With the above observations the instant appeal being no. FMA 3714 of 2016 is, thus, allowed after modifying the impugned judgment and award to the extent as aforesaid.

13. Consequently, connected application being no. CAN 4102 of 2016 is also thus disposed of.

14. Let a copy of the judgment along with Trial Court Records be sent back to the learned Court below forthwith for information.

15. All parties shall act on a server copy of the judgment and order uploaded from the official website of the High Court at Calcutta.

16. Urgent Photostat certified copy of this impugned judgment be given to the parties upon compliance of all legal formalities.

(Prasenjit Biswas, J.)