

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMAT 332 of 2015

Smt. Behula Ruidas

Vs

The Oriental Insurance Company Ltd. & Anr.

**For the Appellant/
Claimant**

: Mr. Jayanta Banerjee.

**For the Respondent No. 1/
Insurance Company**

: Ms. Gopa Das Mukherjee.

**For the Respondent No. 2/
Owner**

: None.

Hearing concluded on

: 12.08.2024

Judgment on

: 20.08.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the claimant against the judgment and award dated 3rd December, 2014, passed by the learned Motor Accident Claims Tribunal, Durgapur, in MAC Case No. 38 of 2011, **under Section 163A of the Motor Vehicles Act, 1988.**

2. Facts :-

“On 16.11.2010 at about 10 p.m. in the night Ram Ruidas was returning his home from Kirti Ceramics after completion of his days work through mud road besides Trilokchandrapur- Debsala Road. Suddenly, near a factory gate, one motor cycle bearing no. WB-40R-3902 coming with a high speed dashed him from behind and as a result thereof Ram Ruidas fall on the road and immediately after the accident, local people shifted him to S.D. Hospital, Durgapur and thereafter, on 17.11.2010, he was referred to Burdwan Medical College & Hospital and as per advice of doctor he was transferred to S.S.K.M. Hospital, Kolkata where he died on 21.11.2010 at p.m.

A police case was registered at Kanksa P.S. being no. 176/10 dated 24.11.2010 u/s 279/304A of I.P.C. and the post mortem was held at S.S.K.M. Hospital dated 23.11.2010. It is also stated that due to sudden death of Ram Ruidas, his family members sustained lost of dependency and financial crisis and he was the only earning member of his family. It is also stated that deceased was a labourer at Kirti Ceramics and the concerned offending motor cycle was under insurance coverage under policy no. 313490/31/2010/1305 which was valid from 23.2.2010 to 22.2.2011. Income of the deceased was considered at Rs.3300/- per month and claim was made in the tune of Rs.4,31,900/-.”

3. **Oriental Insurance Co. Ltd/ O.P. No. 2**, filed written statement denying, inter alia, all the statements made in the petition for compensation u/s 163(A) of M.V. Act. O.P. No.2 has stated that the

claim is made an excessive and without reasonable basis and O.P. no.2 strictly challenged the cause of death by the vehicle covered by insurance policy. Insurance company also raised dispute about the insurance coverage of the Bajaj motor cycle as the vehicle number is not mentioned in the insurance policy. Finally insurance company has prayed for dismissal of the claim.

4. Owner of the offending vehicle filed a separate written statement denying the claim of the petitioner and it is his specific plea that at the time of alleged accident on 16.12.2010, the motor cycle being no. WB-40R-3902 was duly insured with the Oriental Insurance Co. Ltd. through its policy no. 313490/31/2010/1305 valid from 23.2.2010 to 22.2.2011. According to the owner if the petitioner is entitled to get any compensation that is to be paid by the **O.P. no.2 i.e. insurance company.**
5. The claimant examined **one witness** and proved relevant documents marked **Exhibits 1 to 5.**
6. **The Tribunal finally held as follows :-**

“MAC Case No. 38 of 2011

Dated: 3rd December, 2014

..... Petitioner could not able to prove the income of deceased by any cogent evidence. So, notional income of Rs. 3000/- p.m. is considered in favour of the deceased out of which one-third is to be deducted from his personal income and loss of dependency would be of Rs. 3000 - Rs. 1000 = Rs.2000/- per month i.e. Rs.24,000/- p.a.

The claimant mother is aged about 60 years as appears from her voter identity card. Although age of the deceased is shown as 18 years. For the purpose of computation here in this case the age of the dependent mother would come into

consideration. That being the position multiplier would be 5 in this case.

In that event, compensation would be Rs. 24,000/- X 5 = Rs.1,20,000/-. In addition to that petitioners are also entitled to get of Rs.5000/- on account of funeral expenses Totaling Rs. 1,20,000/- + Rs.5000/- =Rs. 1,25,000/-. Petitioners are also entitled to get interest @ 7% p.a. upon the awarded compensation amount from the date of filing of the claim till realization of the entire awarded amount.....

**Sd/-
Judge,
MAC Tribunal
Durgapur”**

7. From the materials and evidence on record, it appears that:-

- (i) The **delay** in lodging the FIR has been **duly explained** and decided by the tribunal.
 - (ii) The finding of the tribunal as to the involvement of the offending vehicle in the accident in this case and having a **valid insurance** is also in accordance with law.
 - (iii) The death of the victim as a result of the injuries sustained in the accident in this case has also been duly proved.
- 8.** The present appeal is an appeal from a claim application under Section 163A of M.V. Act and the position of law in such a proceeding is already in place and the same is also applicable to the present case.
- 9.** (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.”

10. **In the present appeal**, the claim was decided by the tribunal on 3rd December, 2014, thus prior to 22nd May, 2018 and compensation of a sum of Rs. 1,25,000/- was granted in terms of the old schedule.
11. **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 Appellant/Claimant is 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.**
12. Admittedly, the **Appellant/Claimant** has already received an amount of compensation of **Rs. 1,25,000/-** in terms of order of the Learned Tribunal. Accordingly, the **Appellant/ Claimant** is now entitled to the balance amount of compensation of **Rs. 3, 75, 000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**
13. **Respondent No. 1/ Insurance Company**, thus is directed to deposit the balance amount and 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. The **Respondent No. 1/ Insurance Company** shall also pay the interest upon the **sum of Rs. 3, 75, 000/-** at the rate of 6% till deposit, within the period as specified above.
14. Upon deposit of the aforesaid amount with interest, learned Registrar General, High Court, Calcutta shall release the amount in favour of

the **Appellant/Claimant**, upon satisfaction of his identity and payment of *ad-valorem* Court fees, if not already paid.

15. The appeal being FMAT 332 of 2015 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

16. No order as to costs.

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

18. Interim order, if any, stands vacated.

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

20. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)