

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA No.744 of 2022
Jharna Karmakar & Ors.
vs.
Safikul Islam & Anr.

Mr. L.M. Ghosh

... for the appellants/claimants

Mr. Rajesh Singh

... for the respondent No.2/insurance
company.

Heard on & Judgment on : 28.11.2024

Ananya Bandyopadhyay, J:-

1. The Learned Advocates representing the appellants/claimants as well as respondent No.2/insurance company are present.
2. The instant appeal had been preferred by the appellants/claimants against the impugned judgment and award dated 27th January, 2022 passed by the Learned Additional District & Sessions Judge, Fast Track, 3rd Court cum M.A.C. C. Tribunal, Barasat, North 24 Parganas in M.A.C. Case No. 10 of 2017 (Old No. 21/2014).
3. An application under Section 163A of the Motor Vehicles Act had been filed due to death of the victim in an accident which occurred on 05.04.2014 at about 4.30 hours near Champadali More, with the involvement of the offending vehicle being a bus bearing No. WB/25-

E/8182 which approached at a high speed and hit the pedestrian, the victim who suffered injury on his right leg which was operated by the doctors at R.G. Kar Medical College and Hospital.

4. The Learned Tribunal after recording the evidence, disposed of the issues framed and awarded a sum of Rs.47,220/- along with an interest at the rate of 6% per annum from the date of filing of the case i.e. 21.06.2014 till the realization of the of the entire amount. The O.P. No.2 insurance co. ltd. was directed to pay Rs. 47,220/- along with interest as stated above to the petitioner No.1 within the period of two months from the date of this award and to issue account payee cheque accordingly.
5. The Learned Advocate representing the appellants/claimants submitted that the learned Tribunal not considering the application under Section 163A of the Motor Vehicles Act did not grant the consolidated sum of Rs. 5,00,000/-. However, not applied the multiplier method.
6. The Learned Advocate representing the respondent No.2/insurance company submitted that the victim suffered an injury to the extent of 42% which was on the higher side and the learned Tribunal had committed an error in considering the compensation amount based on the multiplier method as well as percentage of disability.
7. Considered the submission of the Learned Advocates representing for both the parties.

8. Since, the occurrence of the accident, involvement of the offending vehicle, driving licence, route permit and insurance policy etc. have not been disputed by the Learned Advocate representing the appellant/insurance company, this Court restricts itself only to the extent of granting compensation considering the judgment of the Hon'ble High Court in *Urmila Halder v. The New India Assurance Company Ltd*¹. and the same being affirmed by the Supreme Court in Special Leave Petition² and the notification dated 22nd May, 2018, in the second schedule 1(b) in case the disability 42% and the Hon'ble Supreme Court, the second schedule 1(b) is as follows: -

“Accidents resulting in permanent disability:

Compensation payable shall be = (Rs.5,00,000/- x percentage 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 fifty thousand rupees.”

9. The appellants/claimants are entitled to receive the balance amount of 1,62,780(Rs. 2,10,000 – Rs. 47,220/-) at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization. The learned advocate for the appellants/claimants submitted that the appellant No.1/claimants have withdrawn a sum of Rs. 47,220/-.

10. The Learned Advocate for the respondent No.2/insurance company is to further deposit the balance sum of Rs. 1,62,780/- along with interest as

¹ 2019(2)TAC 143

² Special Leave Petition(Civil) No. 6260 of 2019

aforesaid before the office of the Learned Registrar General, High Court, Calcutta within six months from the date of passing of this order.

11. The office of the Registrar General, High Court, Calcutta shall encash the cheques and thereafter disburse the same to the present appellants/claimants in equal proportion as mentioned in the award passed by the Learned Additional District & Sessions Judge, Fast Track, 3rd Court cum M.A.C. C. Tribunal, Barasat, North 24 Parganas in M.A.C. Case No. 10 of 2017 (Old No. 21/2014) on proof of proper identification of the appellants/claimants subject to payment of ad valorem Courts fees within six months.
12. The instant appeal is disposed of accordingly.
13. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

C.M.

(Ananya Bandyopadhyay, J.)