IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

<u>APPELLATE SIDE</u>

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 1030 of 2011

(FMAT 657 of 2011)

with

CAN 1 of 2011

(Old No. CAN 5728 of 2011)

National Insurance Co. Ltd.

Vs.

Sri Ranjan Koyal @ Shibu Koyal & Anr.

For the Appellant/ Insurance Company	:	Mr. Parimal Kr. Pahari.
For the Respondent No.1/ Claimant	:	Mr. Niranjan Maity.
For the Respondent No.2/ Owner	:	None.
Hearing concluded on	:	18.09.2024
Judgment on	:	18.09.2024

Shampa Dutt (Paul), J.:

1. The present claim appeal has been preferred by the Appellant/Insurance Company against the judgment and award dated 19th February, 2011, passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District and Session Judge, 9th Fast Track Court, Alipore, South 24 Parganas, in MAC Case No. 01 of 2010, **under Section 163A of the M.V. Act.**

2. **FACTS :-**

> *"……On 24.06.2005 at about 6.00 p.m. the driver of the offending vehicle no. WB23A 1855 drove the same in rash and negligent manner and dashed victim Ranjan Kayal while he was coming towards Sagar from Kachuberia side on foot in the extreme left side of non metallic portion of the road and as a result he sustained severe injuries on his person causing permanently disablement. At the time of the alleged incident he was aged about 21 years and he was a student of Mohananda Vidyamandir and his yearly income was Rs.15,000/- per month as notional income………"*

3. The owner of the offending vehicle i.e. O.P. No. 1 did not contest the case.

4. O.P. No. 2 i.e. Insurance Company contested the case by filing a W.S. denying all the material allegations made in the petition contending inter alia that the petitioner has no cause of action to file the case, claim is barred by law of limitation and also bad for misjoinder of necessary parties. Facts stated in the petition are false and petitioner is bound to prove the same by adducing sufficient evidence. Claim is excessive, high and without any basis. He further stated that the victim himself was responsible for the alleged accident. He prayed for dismissal of the case.

5. The claimant/injured examined himself as **P.W. 1** in the present case and the relevant documents have been marked as **Exhibits 1 to 17.**

6. On considering the materials and evidence on record, the learned Tribunal held as follows :-

"………<u>MAC Case No. 01 of 2010</u>

<u>Dated: 19th February, 2011</u>

………In view of the aforesaid discussion I have no hesitation to say that it is very risky to assess the percentage of disablement only on the basis of the certificate of said doctor. In this situation this Court has no other alternative but to assess the medical papers of the victim in the light of Workmen Compensation Act. As per Ext. 6 patient was treated at outdoor of National Medical College and Hospital on 25.06.05 at about 7.00 p.m. i.e. after one day from the date of accident. After primary treatment he was released therefrom. Accordingly, I find that he was only treated in the said hospital on one occasion i.e. on 25.06.05. Considering the entire medical papers available in the record i.e. Ext. 6, Ext. 7, Ext. 8, I am of the opinion that as best it can be said that victim suffered permanent partial disability to the extent of 20% (Twenty percent).

So the compensation comes to Rs.15,000 x 17 x 20/100 = Rs.51,000/-.

Considering the entire medical papers available in the record I am of the further opinion that victim suffered aforesaid permanent partial disability due to grievous injury which he sustained in the aforesaid road accident.

Petitioner claimed medical expenses of Rs.25,000/-. He produced some vouchers regarding expenditure of treatment which have marked as Ext. 12 & 14 series.

On perusal of Ext. 12 victim incurred Rs.5843/- relating to his treatment. He paid Rs.2500/- as per Ext. 12/a. After deduction of the said amount he paid remaining amount of Rs.3343/- by Ext. 12/b. Accordingly I find that victim paid Rs.5843/- to health care and research center relating to his treatment for the period from 25.06.05 to 29.06.05 he also purchased some medicines by Ext. 14 series relating *to his treatment in the aforesaid period. I also find that as per Ext. 14 series he incurred Rs.2389/-.*

Petitioner is further entitled to Rs.5000/- as pain and sufferings beside the aforesaid compensation. So the total compensation comes to Rs.64232/- (Rupees Sixty four thousand two hundred thirty two).

Aforesaid amount shall carry interest @ 7% per annum from the date of filing of this i.e. from 15.02.06 to till the date of realization. O.P. no. 2 being the insurer of the offending vehicle is responsible to pay the aforesaid amount to the petitioners.....

Sd/-
Motor Accident Claims Tribunal
cum
Addl. Dist. & Sessions Judge,
9th Fast Track Court, Alipore,
South 24 Parganas......"

7. Being aggrieved the Appellant/Insurance Company has preferred the present appeal on the ground as follows :

That the learned Tribunal was wrong in holding that the vehicle in the charge-sheet is the offending vehicle in the present case, as the number of the vehicle in the first information report and the charge-sheet are different.

8. From the materials and evidence on record, the following is evident:-

i) The offending vehicle as noted in the FIR is WB19A 1855 whereas on completion of investigation it appears that the offending vehicle in the present case is WB23A 1855 which was duly insured by the present appellant/insurance company at the time of accident.

ii) *The driver of the offending vehicle WB23A 1855 was arrested relating to the accident in this case and the driver's licence was also seized.*

iii) *The owner of the offending vehicle is one Mr. Pritam Jana. As such, it appears that the learned Tribunal rightly came to the conclusion that the owner wrongly mentioned the number of the offending vehicle as WB19A 1855 instead of WB23A 1855.*

9. Considering the charge-sheet in the present case and the evidence of the witnesses on record, it appears that the Trial Court rightly held that the charge-sheeted vehicle bearing number WB23A 1855 is the offending vehicle and as the same was duly insured by the appellant/insurance company at the time of accident, the appellant is liable to pay the compensation in the present case.

10. It has been clearly proved that the victim suffered injuries in the accident in the present case. He was aged about **21 years** at the time of accident (**Exhibit 17**).

11. The victim's income was taken as national income of Rs.15,000/-. The present accident occurred in the year 2005 and, as such, the income of the insured in absence of any documents in support be taken as **Rs.3,000/- per month.**

12. The involvement of the offending vehicle has been duly proved.

13. The driver had valid licence (**Exhibit 13**).

14. The disability certificate in the present case is not as per the rules, as the same has not been issued by the respective medical board. It appears that it has been issued by a private doctor. The learned Tribunal rightly disbelieved the said disability certificate.

15. The present claim is under Section 163A of the M.V. Act.

16. (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."*

17. **In the present appeal,** the claim was decided by the tribunal on **19th February, 2011,** thus prior to 22nd May, 2018 and compensation of a sum of **Rs. 64232/-** was granted in terms of the old schedule.

18. **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 **Claimant** is not entitled to any further compensation **under Section 163A of the 1988 M.V. Act read with the new schedule,** as the disability certificate in the present case is not as per the rules. As per the said rule 11(3) in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.(Supra),*** the claimant is entitled to a fixed sum of Rs. 25,000/-, considering the nature of the injuries.

19. Admittedly, the **Appellant/Insurance Company** has deposited the amount of compensation of **Rs. 64232/-** in terms of order of the Learned Tribunal. The present claim being under a beneficial legislation, this Court is not inclined to interfere with the order under appeal.

20. The judgment under appeal was passed in the year 2011 and the appeal has been preferred also in 2011 and the present appeal has been preferred by the Insurance Company.

21. Taking into consideration, that the amount of **Rs. 64232/-** is already deposited by the **Appellant/Insurance Company** with the learned Registrar General, High Court, Calcutta, the amount shall be released in favour of the **Claimant,** upon satisfaction of his identity and payment of *ad-valore*m Court fees, if not already paid.

22. The appeal being FMA 1030 of 2011/FMAT 657 of 2011 is thus dismissed, on the order of the tribunal being affirmed.

23. No order as to costs.

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

25. Interim order, if any, stands vacated.

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

27. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)