

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 958 of 2006

With

CAN 2 of 2009

(Old No. CAN 9283 of 2009)

National Insurance Co. Ltd.

Vs

Kamela Bewa & Ors.

**For the Appellant/
Insurance Company**

: Ms. Gopa Das Mukherjee.

For the Respondents

: Mr. Saidur Rahaman.

Hearing concluded on

: 14.08.2024

Judgment on

: 22.08.2024

Shampa Dutt (Paul), J.:

1. **The present appeal by the Insurance Company/Appellant** has been preferred against the judgment and award dated 19th January, 2006 passed by Ld. Additional Judge, 3rd Court, Motor Accident Claims Tribunal, Murshidabad, in M.A.C. Case No. 34 of 2002, **under Section 163A of the Motor Vehicles Act, 1988.**

2. **FACTS :-**

“On 01.01.2002 the deceased Budhu Sk. boarded a bus being no. W.B. 39/3613, at Umarpore for going to Durgapur and while the bus reached at Chakpara on Panagar Moregram high way having running at a break neck speed, violently dashed against a Truck coming from opposite side and the driver of Bus having lost his control took the Bus off the road causing severe injury to several passengers. The injured Budhu Sk. subsequently died in the hospital. The said accident having taken place within P.S. Rampurhat, Dist. Birbhum. On the basis of a report Rampurhat P.S. Case No. 1/2002 dated 1.1.2002 was registered and an U.D.Case, being No. 1/02 dated 1.1.02, has also been started. The deadbody of the victim Budhu Sk. was shifted to Rampurhat Subdivisional Hospital, where p.m. examination over the deadbody of the victim was held by Medical Officer, Rampurhat Subdivisional Hospital.

The claimant petnrs. are the legal representatives of the deceased Budhu Sk. and claimant petnr., No. 1 is the wife; claimant-petnr. Nos. 2 and 3 are the minor sons of the deceased and claimant petnr. No. 4 is the mother of the deceased Budhu Sk. and are all of village Ichhakhali Bhatpara, P.S. Raghunathganj, Dist. Murshidabad.

The deceased Budhu Sk. was aged 33 years and was a Mason by occupation having annual income of Rs. 18,000/-. The owner of the offending vehicle, being No. W.B. 39/3613, is South Bengal State Transport Corporation, Durgapur, and the insurer is National Insurance Company Limited, Berhampore, Murshidabad and thus the claimant prays. claim compensation of Rs. 2,00,000/- on account of the death of Budhu Sk.”

- 3. South Bengal State Transport Corporation/Owner** on receipt of summons of this case has appeared and contested this claim petition by filing written statement, denying the material allegations of the claim petition and inter alia contending that:-

“The deceased Budhu Sk. was not a passenger of the Bus, being No. WB. 39/3613 and the said Bus were never driven at a breakneck speed and an unknown Truck all on a sudden coming from opposite direction dashed the Bus and fled away. The driver of the Bus was not responsible for the alleged accident. Rather the driver of the Truck was fully responsible for the alleged accident. As such the O.P./Owner/SBSTC is not under any obligation to pay the compensation as prayed for. He prays for dismissal of the claim petition.”

- 4. O.P. No. 2/National Insurance Company Limited**, on receipt of summons appeared in this claim case and contested the claim petition by filing written statement and denied the material allegations of the claim petition, inter alia contending that the O.P., Insurance Company, is not responsible to take any risk as the **O.P. No. 1, Owner/SBSTC has not paid premium for the insurance.** The route permit, driving licence, fitness certificate, registration document etc. shall be directed to be produced and on failure to produce, then the statutory violation of

the condition under the policy as contemplated u/s 49 of the M.V. Act will arise and the O.P. will not stand in law to indentify the awarded amount of compensation. The alleged accident, if any, occurred due to the said Truck and the owner of the said Truck and insurer should be made party in this case. Thus they prayed for dismissal of this claim petition.

5. On filing additional written statement on 28.4.05 the O.P./National Insurance Company Limited, has alleged that the vehicle in question, being No. W.B.39/3613 **(S.B.S.T.C Bus), is not covered by motor policy.** The South Bengal State Transport Corporation has taken the policy from this O.P. which is called as **special contingent policy, “Yatri Suraksha Bima”** which is not a motor policy. As the said policy is not a motor policy, motor accident claim case cannot stand against the National Insurance Company Limited. The policy is also a limited one. It is further alleged that it reveals from the claim petition that the deceased was travelling by the Bus covered under policy, but the deceased had not completed the distance of more than 100K.Ms. from the place of journey and the place of accident, as per terms of the policy. The O.P./Insurance Company is no longer liable to pay any compensation to the claimant petitioners and thus prays for dismissal.
6. **On considering the materials and evidence on record, the tribunal directed the O.P./Insurance Company to pay the compensation as follows:-**

“M.A.C. Case No. 34 of 2002

Dated: 19th January, 2006

Let us now calculate the quantum of compensation which can be awarded in favour of the claimant/petitioners. The age of the deceased Budhu Sk. being between 30 to 35 years as opined above the multiplier of 17 shall be applicable in this case according to 2nd schedule of Sec. 163A of the M. V. Act. The income of the deceased having notionally fixed at Rs. 15,000/- the same need be reduced by 1/3rd. in considering the expenses which the victim would have incurred towards maintaining himself had he been alive. Thus after reduction the dependency comes to Rs. 10,000/- per annum. Thus the compensation comes to 17 X Rs. 10,000/- = Rs. 1,70,000/-. In addition to that the spouse of the victim i.e. the petitioner No. 1, the wife of the deceased Budhu Sk. shall get Rs. 5,000/- towards the loss of consortium. In addition to that she will get funeral expenses of Rs. 2000/-. Thus the entire compensation comes to Rs. 1,77,000/-.

Sd/-

**Additional Judge, 3rd Court,
Motor Accident Claims Tribunal,
Murshidabad”**

- 7. Insurance Coverage of the offending vehicle (SBSTC) is by M/s National Insurance Co. Ltd.**
- 8. Documents show that the vehicle was insured under special contingency policy being “Yatri Suraksha Bima”.**
- 9. In National Insurance Company Ltd. Vs The Chief Electoral Officer & Ors., Civil Appeal No.4769 of 2022, decided on 8th February 2023, the Supreme Court held:-**

“26. We would first like to elucidate the principles on which a claim under any insurance policy is examined. It is trite to say that the terms of the insurance policy are to be strictly construed.

27. The insurance contracts are in the nature of special class of contracts having distinctive features such as utmost good faith, insurable interest, indemnity subrogation, contribution and proximate cause which are common to all types of insurances. Each class of insurance also has individual features of its own. The law governing insurance contracts is thus to be studied in three parts, namely, (1) general characteristics of insurance contracts, as contracts; (2) special characteristics of insurance contracts, as contracts of insurance, and (3) individual characteristics of each class of insurance.

*29. This Court in **Vikram Greentech India Ltd. v. New India Assurance Co. Ltd.**, reiterated that the insured cannot claim anything more than what is covered by the insurance policy. The terms of the contract have to be construed strictly, without altering the nature of the contract as the same may affect the interests of the parties adversely. **The clauses of an insurance policy have to be read as they are. Consequently, the terms of the insurance policy that fix the responsibility of the insurance company must also be read strictly.***

10. The policy document has not been filed/proved before the tribunal. An illegible copy has been filed before this Court, wherein it is stated:-

“INJURY SERIES CLAUSE:-

For the purpose of this policy where several bodily injuries are attributable directly or indirectly to the same road accident all such bodily injuries shall be added together and all such bodily injuries shall be treated as one claim.

OUT PATIENT DEPRTMENT EXPENSES (OPD):- *All necessary and reasonable medical expenses incurred in the outpatient department of a hospital or Nursing Home immediately after one road accident giving rise to a claim under this policy and relevant to the injuries sustained thereof but not exceeding in the aggregate a sum of Rs. 10,000/-.*

N.B. Actual expenses incurred of Rs. 10,000/- whichever is less would be admissible. This limit is within the overall sum insured of Rs. 1,00,000/- under Section II.”

11. The General exceptions clause is included in the document in case of violation of the policy conditions.
12. **In the present case**, there is no such case of violation made out by the Insurance Company.
13. Thus, the contention of the learned counsel for insurance company that their liability is only to the extent of one lakh rupees does not hold good in this case.
14. The present claim is under Section **163A M.V. Act**.
15. **The case of the claimant that the deceased died in the accident in this case has been proved.**
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 January, 2006**, thus prior to 22nd May, 2018 and compensation of a sum of **Rs. 1,77,000/-** 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 **Respondents /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.

- 19. The present appeal has been preferred by the Insurance Company.**
- 20. Admittedly, the Appellant/Insurance Company has deposited the amount of compensation of Rs. 1,77,000/- in terms of order of the learned Tribunal. Accordingly, the Respondents/Claimants are now entitled to the total amount of compensation of Rs. 5,00,000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit, on the total compensation amount.**
- 21. Taking into consideration, the amount already deposited by the Appellant/Insurance Company, the Insurance Company shall now deposit the balance amount of Rs. 3,23,000/- along with the interest on the total compensation amount with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the Claimants/Respondents in equal proportion, after payment of the amount for loss of Consortium to the claimant/ wife, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.**
- 22. In view of Para 10 of this judgment, the Appellant/Insurance Company is liable to pay compensation to the extent of only Rs. 1 lakh along with interest. As such the Insurance Company is entitled to recover the balance amount of Rs. 4 lakhs, along with interest paid, from the**

Respondent/Owner/SBSTC, by due process of law. (*Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors., in SLP (C) No. 33638 of 2017, on 3rd November, 2022*)

- 23. The appeal being FMA 958 of 2006 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.**
- 24. No order as to costs.**
- 25. All connected applications, if any, stand disposed of.**
- 26. Interim order, if any, stands vacated.**
- 27. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.**
- 28. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking.**

(Shampa Dutt (Paul), J.)