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**FMA 1206 OF 2021
(CAN 1 of 2021)**

Swapna Malakar
Vs.
The National Insurance Company Limited

Mr. Amit Ranjan Roy
... for the appellants

Ms. Sucharita Paul
... for the respondent

The instant application has been preferred against the judgment and award dated 19th April, 2021 passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Krishnagar, Nadia in MAC Case No. 182 of 2018 .

The claimants have preferred the instant appeal against the award.

The report of the Stamp Reporter suggests that the appeal is preferred in time.

Accordingly, the appeal is formally admitted.

Register the same.

The respondent no. 1, National Insurance Company Limited, is duly represented by Ms. Pal, learned advocate.

The respondent no. 2 is the owner of the offending vehicle who did not contest the matter before the learned Tribunal. Accordingly, the notice of appeal upon the

respondents are dispensed with.

CAN 1 of 2021 was preferred for expeditious disposal of the hearing of the instant appeal. This application was filed in the year 2021 and now this is 2024. I think it necessary to take up the hearing of the instant appeal.

FMAT 493 of 2021

The factum ardent of this case is that one Sukesh Malakar was dashed by a lorry being no. WB 51A/1118 on 3rd May, 2018 at about 8.15 p.m. near Krishnagar Traffic More Bus Stand under Kotwali Police Station within district Nadia. After such incident, the victim was admitted to the Nadia District Hospital and thereafter referred to Kolkata for better treatment. He also admitted in a nursing home at Kolkata but after some days the victim died in course of treatment. The widow and the children of the victim have preferred an application under Section 163A of the Motor Vehicles Act before the learned Tribunal for getting compensation on the ground that the incident took place due to rash and negligent driving of the driver of the offending vehicle. The claim case was contested by the insurance company by filing written statement, The learned Tribunal after hearing the parties and after receiving the evidence has

allowed a sum of Rs.1,35,000/- towards compensation in favour of the claimant and directed the insurance company to pay the compensation. The insurance company had satisfied the award through the learned Tribunal. The claimant have preferred the instant appeal on the ground of enhancement of the award.

Mr. Roy, learned advocate appearing for the claimant submits that, the award passed by the learned Tribunal is meager one and it is not in conformity with the observation of Hon'ble Apex Court in **New India Assurance Company Limited Vs. Urmila Halder**. He submits that, Hon'ble Apex Court in **Urmila Halder (supra)** had directed that in application under Section 163A of the M.V. Act, amount of compensation would be fixed as per the notification dated 22nd May, 2018. The award passed by the learned Tribunal was not followed such notification. So in the instant case, the award should be 5,00,000/-.

Learned advocate appearing for the respondent raised an objection and submits that the claimants have already received the award. They again preferred the instant appeal on some frivolous ground. She further submits that claimant are debarred to prefer such appeal after receiving the award. However, she submits that the observation of

Hon'ble Apex Court in **Urmila Halder (supra)** has been followed by this Court on several occasions.

Heard the submissions of the learned advocates for the respective parties. Perused the observation of the learned Tribunal. It appears that the learned Tribunal had adopted the structure formally according to the second schedule of 163A of the MV Act. The old second schedule has been substituted by the notification dated 22nd May, 2018. It has been specifically notified that in a case of fatal accident, where death has been caused, in an application under Section 163A of the MV Act the fixed compensation will be Rs.5,00,000/-. The Hon'ble Apex Court in **Urmila Halder (supra)** has directed to follow the notification dated 22nd May, 2018. I am of the opinion that the award passed by the learned Tribunal required modification by virtue of the decision of Hon'ble Apex Court in **Urmila Halder (supra)** as well as the notification dated 22nd May, 2018.

In this case, the fixed compensation would be Rs.5,00,000/-.

Insurance company has already satisfied the award of Rs.1,35,000/-. The balance award comes to Rs.3,65,000/-. The insurance company is directed to pay the

balance award together with 6% p.a. interest from the date of filing of the claim application i.e. from 20th August, 2018 through the Office of the learned Registrar General, High Court, Calcutta within six weeks. Upon such deposit, the claimants are at liberty to receive the same on usual norms of identification and certification in equal shares.

It is further ordered that the direction of the learned Tribunal regarding the recovery of the entire awarded sum from the owner of the offending vehicle remain unaltered.

Accordingly, the insurance company is at liberty to recover the entire awarded sum from the owner of the offending vehicle according to law laid down by the Hon'ble Apex Court in **National Insurance Company Limited Vs. Swaran Singh**.

FMA 1206 of 2021 along with connected application, if pending, are disposed of.

There shall, however, be no order as to costs.

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(Subhendu Samanta, J.)

