

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMAT 543 of 2021

With

CAN 1 of 2024

Ruma Saha @ Ruma Rani Saha & Anr.

Versus

The New India Assurance Company Limited and Another

For the Appellants : Mr. Amit Ranjan Roy, Adv.

For the Respondent No. 1/Insurance Company

: Ms. Sucharita Paul, Adv.

Heard on : 08.04.2024

Judgment on : 08.04.2024

Ajay Kumar Gupta, J:

CAN 1 of 2024

1. The learned counsel appearing on behalf of the appellants/claimants moved an application for condonation of delay in filing appeal. There is 20 days delay in preferring the instant appeal. He prays for condonation of delay. He referred the paragraph 5 of the application to show the sufficient cause, which was not intentional or latches on the part of the appellants/claimants.

2. On the other hand, the learned advocate appearing on behalf of the insurance company raised objection of such prayer.

3. Having heard the submissions of learned advocates for the parties and on perusal of the application for condonation of delay, this Court satisfied with the cause shown by the appellants/claimants for such delay as such

delay in filing appeal is hereby condoned. Appeal is admitted.

4. Accordingly, **CAN 1 of 2024** is disposed of.

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5. It is submitted by both the parties that instant appeal can be disposed of without calling of LCR only in view of the judgment of the Hon'ble Supreme Court since legal points is involved in the instant case since the claim application had been filed before the Learned Tribunal under Section 163A of the Motor Vehicles Act on account of death of one Shankar @ Sankar Saha. He was Khalasi of the vehicle No. WB 57B/3499 which was proceeding towards Berhampur though NH-34 on 08.03.2016 and when the vehicle reached near Panighata Dhaba under P.S. Kaliganj, Dist. Nadia, at that point of time, one unknown lorry stopped suddenly and the vehicle No. WB 57B/3499 dashed the front lorry as a result deceased received serious

injuries and died on the spot. Due to sudden death of deceased, the claimants have filed claim application under Section 163A of the Motor Vehicles Act, 1988 praying for compensation to the tune of Rs. 3,60,000/- for the accidental death of the deceased.

6. The opposite party/insurance company has contested the case and filed written statement. Both parties adduced evidence before the Learned Tribunal. The case falls under 'no fault liability.' The claimants have to prove only the involvement of the offending vehicle and accident in which the victim suffered injury and subsequently succumbed to such injury. After considering the case of the parties as well as appreciation of evidence, the learned Tribunal finally, awarded the compensation amounting to tune of Rs. 2,64,000/- and that should be paid within 45 days from the date of passing award along with interest @ 9 % per annum from the date of filing of the case, in default,

awarded compensation shall carry further interest @ 10% per annum till the date of its actual realisation.

7. Appellants/Claimants assailed the judgment and award dated 26.11.2019 passed by Learned Judge, Motor Accident Claims Tribunal, District Judge, Nadia in M.A.C. Case No. 72 of 2017. The present appellants have filed this appeal praying for enhancement of the compensation to the claimants in view of the amendment made by a Gazette Notification on 22nd May, 2018 in the Motor Vehicles Act, 1988. As per new amendment, when a person died due to motor traffic accident, claimant or claimants is/are entitled to get Rs. 5,00,000/- as lump sum amount of compensation as it has given retrospective effect.

8. The learned advocate appearing on behalf of the appellants referred two decisions. Firstly, passed by Division Bench of this Court in **Urmila Halder vs. New India Assurance Co. Ltd. & Ors (FMA 446 of 2010)**

reported in 2018 SCC Online Cal 11751 wherein the Division Bench of this Court has held that total sum of Rs. 5,00,000/- in a fatal accident falls under Section 163A of the Motor Vehicles Act, 1988 should be paid. It has retrospective effect though the amendment has come into effect on and from 22nd May, 2018 as such application pending prior to the amendment shall have retrospective effect.

Secondly, a judgment passed in **New India Assurance Co. Ltd. -vs.- Urmila Halder** in **Special Leave Petition (Civil) No. 6260 of 2019**, The Hon'ble Supreme Court has affirmed the view taken by this Court and further held as under:

“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 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 Rs.5,00,000/= (Rupees Five lakhs).”

9. This instant appeal is covered by the judgment of the Hon’ble Supreme Court passed in **The New India Assurance Co. Ltd Versus Urmila Halder** in **Special Leave Petition (Civil) No. 6260 of 2019**. Hence, the claimants are entitled to get a fixed compensation of Rs. 5,00,000/- on account of death caused by Motor Vehicle Accident as there is no dispute about the involvement of the vehicle and the death of the victim was caused due to accident as claimed and proved. There is also no dispute about the validity of Insurance policy of the offending

vehicle with the Respondent/Insurance Company on the date of accident.

10. It is submitted by learned advocate appearing on behalf of the insurance company that the compensation allowed by the Learned Tribunal has already been received by the claimants. Accordingly, appellants/claimants are entitled to get enhanced compensation amount (Rs.5,00,000/- minus 2,64,000/-) to the tune of Rs. 2,36,000/= (Rs. 2 lakhs thirty-six thousand only) which shall carry interest @ 6% per annum from the date of filing of the claim application till final payment.

11. The respondent no. 1/Insurance Company is directed to pay the enhanced compensation amount together with interest as indicated above by way of cheque before the Office of Learned Registrar General, High Court, Calcutta within a period of six weeks from this date.

12. Learned Registrar General, High Court, Calcutta, upon deposit of the enhanced compensation amount together with interest on the awarded compensation amount as indicated above, shall release the amount in favour of the appellants/claimants in equal share to the appellants/claimants upon proper identification and subject to verification of the payment of ad valorem Court fees on the total compensation amount, if not already paid.

13. With the above observations, the instant appeal being **FMAT 543 of 2021** is, thus, allowed after modifying the impugned judgment to the extent as aforesaid without order as to costs. Connected application **CAN 1 of 2024**, is also, thus, disposed of.

14. Let a copy of this Judgment along with Lower Court Records, if any, be sent back to the learned Court below forthwith for information.

15. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

16. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)