**IN THE HIGH COURT AT CALUTTA**
**Civil Appellate Jurisdiction**

**19.03.2024**
**SL No.190**
**Court No. 551**
**Ali**

**F.M.A.T. 740 of 2018**
**With**
**IA No.: CAN/1/2024**

**Smt. Falguni Kushmete @ Falguni Mete & Ors.**
**Vs.**
**The New India Assurance Co. Ltd. & Anr.**

Mr. Amit Ranjan Roy
……for the appellants-claimants.

Ms. Sucharita Paul
……….for the respondent-insurance Co.

**In Re.:CAN1/2024**

The instant appeal has been preferred against the judgment and award dated 9th February, 2018, passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Burdwan, in MAC Case no. 107 of 2012.

The report of the Stamp Reporter suggests that there are 80 days delays in preferring the instant appeal.

Heard the learned advocate perused the grounds; having heard the learned advocate and on perusing the grounds in the body of the application itself, it appears to me that the grounds are sufficient. Accordingly, the application being CAN 1 of 2024 under Section 5 of the Limitation Act is considered and allowed.

Accordingly, the application being CAN 1 of 2024 is disposed of.

**F.M.A.T. 740 of 2018**

The petitioners being the claimants preferred an application before the learned Tribunal under Section 163-A of the M.V. Act for getting compensation on the ground that their predecessor died in a road traffic accident due to rash and negligent driving of the driver of a bus bearing Registration No. WB-53-9225.

The learned Tribunal after hearing the parties and after receiving the evidences has awarded a sum of Rs.4,49,500/- towards the compensation and directed the Insurance Company to pay the compensation.

Being aggrieved by and dissatisfied with the said award the claimants have preferred the instant appeal for enhancement of the award.

Learned advocate, Mr. Amit Ranjan Roy appearing on behalf of the appellants/claimants submits that the award passed under Section 163-A of M.V. Act is covered by the decision of Hon'ble Apex Court passed in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.,*** the Hon'ble Apex Court has guided that the application filed under Section 163-A of M.V. Act prior to the amendment of 163-A i.e. May 22, 2018, a fixed amount of compensation amounting to Rs.5,00,000/- has to be awarded in a fatal accident.

In this case, he further argued that the

Hon'ble Apex Court has affirmed the decision of Division Bench of this Court passed in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors. (FMA 446 of 2010).*** He submits that the learned Tribunal should have awarded a compensation of Rs.5,00,000/- and he prayed for necessary modification of the award.

Learned advocate Ms. Sucharita Paul appearing on behalf of the Insurance Company has raised strong objection but has contended that the law has been settled by the Hon'ble Apex Court as argued by learned advocate Mr. Roy.

Heard the learned advocates perused the observation of learned Tribunal. It appears that in assessing the compensation the learned Tribunal has adopted the structure formula under 2nd schedule of Section 163-A of M.V. Act. The award was passed on 9th February, 2018. The Hon'ble Division Bench of this Court in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.*** has settled the principle that though the amendment has came into force on 22nd May, 2018 but it has retrospective effect; so the application pending prior to the amendment shall have the effect of the amendment. The view of the Hon'ble Division Bench was challenged by the Insurance Company before the Hon'ble Apex Court. The Hon'ble Apex Court after long discussion has affirmed the decision of this

Court and has held that in a case of fatal accident where death has been caused, the compensation should be fixed to be Rs. 5,00,000/- along with interest.

Considering the decision of Hon'ble Apex Court and considering the facts and circumstances of this case, it appears to me that the present case, the death has been caused due to the road traffic accident, thus, the claimants are entitled to get the fixed compensation of Rs. 5,00,000/-. The award of compensation shall carry @ 6% simple interest from the date of filing of the claim application i.e. on 11th April, 2012.

It appears that the claimants have already received amounting to Rs. 4,49,500/-from the office of the learned Tribunal.

The Insurance Company is directed to deposit the balance award of Rs. 50,500/- together with interest as directed above through the office of the learned Registrar General, High Court, Calcutta within six weeks.

I make it clear that the Insurance Company to pay the interest upon the already deposited amount of Rs. 4,49,500/- till the date of filing of the claim application to the date of deposit of the cheque before the learned Tribunal (30.03.2018).

The Insurance Company is further directed to deposit the interest portion upon the balance sum from the date of filing till the realization.

On the above observation, the instant **FMAT 740 of 2018** is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

**(Subhendu Samanta, J.)**