23.04.2024
SL No.9
Court No. 551
Ali

IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

F.M.A. 809 of 2023

New India Assurance Co. Ltd.
Vs.
Madan Chandra Sarkar & Anr.

Mr. Sanjay Paul,
Ms. J. Ghosh
……for the appellant-Insurance Co.

Mr. Jayanta Kumar Mandal
………..for the respondents-claimants.

The instant appeal has been preferred against the judgment and award dated 20th day of January, 2023, passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Balurghat, Dakshin Dinajpur, in MAC Case no. 27 of 2010.

A very short point is involved in the instant appeal.

Learned advocate for the Insurance Company/appellant submits that the Insurance Company has challenged the award passed by the learned tribunal wherein the learned tribunal in deciding an application under Section 163-A of M.V. Act has awarded a compensation amounting to Rs. 5,00,000/- by virtue of a Notification dated 22nd May, 2018.

Mr. Paul, learned advocate further submits that the observation of learned tribunal was based on the decision of Division Bench of this Court passed in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.*** reported in ***(2018) G WBLR (Cal) 329.***

Mr. Paul further submits that the order of Division Bench had been challenged by the Insurance Company before the Apex Court, for that reasons the instant appeal has been preferred.

Mr. Paul further submits that the matter before the Hon'ble Apex Court has been disposed of wherein the Hon'ble Apex Court in SLP (C) 6260/2019 has affirmed the order of Division Bench of this court passed in ***Urmila Halder (supra).*** The Apex Court has passed the order on 8th of February, 2024. He submits that the law has already been decided by the Hon'ble Apex Court. So, the instant appeal become meritless and infructuous.

Learned advocate for the respondents submits that the law has been settled by the Hon'ble Apex Court in ***New India Assurance Co. Ltd. Versus Urmila Halder*** so necessary order may be passed directing the Insurance Company to pay the just compensation.

Heard the learned advocate. It appears that the learned tribunal on the basis of the observation of Hon'ble Division Bench of this Court in ***Urmila Halder (supra),*** has passed the order that an application under Section 163-A of M.V. Act, though filed prior to a Notification dated May 22, 2018 but by virtue of the Division Bench of this Court in ***Urmila Halder (supra)*** the claimants are entitled to get the fixed compensation of Rs.5,00,000/-.

The Division Bench of this Court in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.*** has specifically dealt with by formulating the issue as follows:-

> ***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?***

After through discussion the Hon'ble Division Bench has come to an opinion that:-

> ***"117. Now, if such a claim application comes up before a Tribunal for consideration post May 22, 2018 where all the five conditions as in the preceding paragraph are fulfilled, proceeding by our reasoning it can award only a lump-sum amount of Rs. 5,00,000.00, which would obviously be lesser than what could have been determined under the old schedule. Considering the language in which sub-section (1) of Section 163-A is couched, the Second Schedule as on date of the award invariably has to be looked into and a lesser sum, if required, would have to be determined***

> ***as payable to the legal heirs of such a victim. It is, therefore, not correct to contend that since the new schedule intends to provide greater relief compared to the relief available under the old schedule, following the new schedule would be onerous for the insurance companies in all cases.***
>
> ***Conclusion***
>
> ***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 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".***

The Insurance Company challenged the finding of Division Bench before Hon'ble Supreme Court. The Hon'ble Apex Court in SLP(Civil) No.-6260 of 2019 by its order dated February 08, 2024 has affirmed the Division Bench.

Thus, I find no justification to entertain the instant appeal.

The Insurance Company is directed to pay the fixed compensation amounting to Rs. 5,00,000/-

It appears that the learned tribunal has awarded simple interest @ 5% per annum upon the awarded amount. Mr. Mondal submits that the interest awarded by the learned tribunal is on the lower side so the interest may be enhanced to at least @ 6% per annum .

Mr. Paul, learned advocate submits that as no cross appeal has been preferred against the said award. Thus, in appeal preferred by the Insurance Company the award cannot be enhanced.

Having heard the learned advocates for the parties and after considering the judgment of Hon'ble Division Bench in ***National Insurance Co. Ltd. Vs. Sulekha Das (FMA 3903/2015)*** following decision of Hon'ble Apex Court in ***Ranjana Prakash [(2011) 14 SCC 639]*** and ***R. Swaminathan [2006 (1) TAC 965]*** the award passed by the learned tribunal cannot be enhanced in an appeal filed by the Insurance Company in absence of any appeal or cross appeal by claimants.

Accordingly, the award of Rs. 5,00,000/- shall carry a simple interest @ 5% per annum from the date of filing of the claim application i.e. from 27.02.2010 till the actual payment.

The Insurance Company is directed to comply the order passed by this Court within six weeks from the date of passing of this order through the office of the learned Registrar General, High Court, Calcutta. After such deposit the claimants are at liberty to receive the same equally on usual norms of identification and certification.

It appears that the Insurance Company has deposited the statutory amount of Rs. 25,000/- with the office of the learned Registrar General, High Court, Calcutta. The Insurance Company is at liberty to withdraw the same along with accrued interest.

The office of the learned Tribunal shall act upon the certified copy of this order to receive the deficit court fees, if any.

The instant **FMA 809 of 2023** 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.)