IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA No. 3113 of 2013
(FMAT No. 588 of 2013)

The New India Assurance Co. Ltd.

Vs

Sri Ramesh Santra @ Gutke & Anr.

For the Appellant/ Insurance Company	: Mr. Parimal Kr. Pahari.
For the Respondent No. 1/ Claimant	: Mr. Niranjan Maity, Mr. Saidur Rahaman.
For the Respondent No.2/ Owner	: None.
Hearing concluded on	: 11.07.2024
Judgment on	: 06.08.2024

<u>Shampa Dutt (Paul), J.:</u>

1. The present appeal has been preferred by the Insurance Company against the Judgment and Order passed on 14th March, 2013 by Judge, Motor Accident Claims Tribunal, 5th Court at Alipore, South 24 Parganas in M.A.C. Case 455 of 2004, **under Section 163A M.V. Act.**

2. **<u>THE FACTS</u> :-**

> *"On 13.06.98, driver of a private bus no. WB-19-1376 was proceeding with the vehicle towards Budge Budge from Mahestala in rash and negligent manner and dashed cyclyist Gutkey Santra with great force as a result Gutkey fell down and sustained severe injuries on his person causing **permanent disablement.** At the time of accident petitioner Ramesh @ Gutkey was aged about 22 years and was earning Rs. 1800/- per month. On these grounds the petitioner has claimed compensation of Rs. 1,00,000/-."*

3. **O.P. no.1/ Owner** did not contest this case but **O.P. no.2/Insurance Company** contested the case by filling written statement. In the written statement, O.P. no.2 has taken plea that petitioner has no cause of action and that the claim petition is bad for defect of parties.

4. **The petitioner being the injured in this case, deposed as a witness.**

5. P.W.2 is Dr. P.K. Mondal. He stated that, on 14.01.00 he examined Ramesh Santra aged about 22 years with history of Motor Vehicle accident on 13.06.98. On examination he found mainly shortening of left, about two centimeters in length. He has seen X-ray report dt. 12.12.98 showing luminerated fracture of left shaft medium lower 3rd part. In his opinion he has stated that patient suffered **permanent disability to the extent of 30%** due to mal-united fracture of left shaft femur with shortening of left knee joint shaftness. He has proved a certificate given by him.

6. From the discharge certificate it appears Ramesh Santra was under treatment from 14.06.98 to 28.08.98.

7. Though Insurance policy has not been produced by the opposite parties (Owner and Insurance Company), the Learned Tribunal considered the cover note of insurance, which was seized by the police and the document showed the validity till 15.07.98 (accident on 13.06.98).

8. The Learned Tribunal finally held as follows :-

> ***"M.A.C. Case No. 455 of 2004***
> ***Dated:14.03.2013***
> *After consideration of the entire circumstances this tribunal is of the view that if Rs. 35,000/- is awarded as compensation amount with the interest @ 6% per annum since the date of filling of the claim petitioner dt. 15.06.99 then it will be sufficient and this amount could be easily paid by the Insurance Company.*
>
> ***Sd/-***
> ***Tribunal Judge,***
> ***M.A.C.C.5th Court,***
> ***Alipore"***

9. Being aggrieved, the Insurance Company has filed the present appeal on the following ground:-

> *"That the Learned Tribunal was wrong in directing the Appellant/Insurance Company to satisfy the award inspite of the fact that no valid Insurance policy was placed before the court as evidence."*

10. From the materials and evidence on record, the following is evident :-

i) The victim/injured was admitted for **treatment for about 2½ months, suffering grievous injuries.**

ii) The victim has stated that being a day labour he earned **Rs. 60/- per day.**

iii) **The doctor (P.W.2) has deposed as follows :-**

"On examination I found the following:-

a) Limps while walking.
b) Tenderness left Femur mid shaft with anterior and outward convexity.
c) 2. cm shortening of left thigh length.
d) Last 90° of left knee joint flexion-painful & Limited. X-ray dated 12.12.98 shows Mal united fracture left shaft femur lower third.

After history taking, clinical examination, examination of Hospital discharge certificate, other medical papers, X-ray plates I am of opinion that the patient suffered permanent disability to the extent of 30% due to mal united fracture left shaft Femur with shortening and left knee joint shiftness.

This is the certificate issued by me which also bears my signature and had also L.T.I. of the patient which has also attested by me."

iv) Charge Sheet **(Exhibit 6)** shows that Insurance No. 93787 was seized in respect of the offending vehicle, valid till 15.07.98. The Insurance Company did not adduce any evidence to contradict the said Insurance documents/papers.

v) Age of the victim has been accepted as **22 years.**

11. The Claim in the case is under **163A M.V. Act.**

12. (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."*

13. **In the present appeal,** the claim was decided by the tribunal on **14th March 2013,** thus prior to 22nd May, 2018 and compensation of a sum of **Rs. 35,000/-** was granted in terms of the old schedule.

14. Applying para 11(2) in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors. (Supra),*** the claimant (injured) is entitled to sum of Rs. 5,00,000x30% which amounts to **a sum of Rs. 1,50,000/-.**

15. **Accordingly, the 'just compensation' is this case will be as follows:-**

$$\frac{\text{Rs.}5{,}00{,}000 \times 30\%}{100} = \text{Rs. } 1{,}50{,}000/-$$

16. Admittedly, the **Appellant/Insurance Company** has deposited the amount of compensation of **Rs. 35,000/-** in terms of order of the Learned Tribunal. Accordingly, the **Respondent No. 1 /Claimant** is now entitled to the total amount of compensation of Rs. 1,50,000/- 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.

17. Taking into consideration, the amount already deposited by the **Appellant/Insurance Company**, the **Insurance Company** shall deposit the **balance amount of Rs. 1,15,000/-** 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 **Claimant/ Respondent No. 1**, upon satisfaction of his identity and payment of *ad-valorem* Court fees, if not already paid.

18. The appeal being FMA 3113 of 2013/FMAT 588 of 2013 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

19. No order as to costs.

20. All connected applications, if any, stand disposed of.

21. Interim order, if any, stands vacated.

22. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

23. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)