

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 3127 of 2013

The Oriental Insurance Co. Ltd.

Vs

Smt. Sumitra Roy & Anr.

**For the Appellant/
Insurance Company**

**: Mr. Sanjay Paul,
Ms. Jaita Ghosh.**

**For the Respondent No.1/
Claimant**

: Mr. Saidur Rahaman.

**For the Respondent No. 2/
Owner**

: None.

Hearing concluded on

: 20.08.2024

Judgment on

: 30.08.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the Appellant/Insurance Company against the judgment and order dated 18th March, 2013 passed by Ld. Judge, Motor Accident Claims Tribunal, 2nd Court, Jalpaiguri, in M.A.C. Case No. 109 of 2008, **under Section 163A of the Motor Vehicles Act, 1988.**

2. **Facts as stated by the claimants:-**

“On 3.1.08 at about 11 a.m. the victim was proceeding in a bi-cycle from Dhantala towards Krantimore and the offending motor cycle bearing no. WB-72C/9032 came and suddenly dashed the victim and the victim received severe injuries and died at the hospital. Hence, this case”

3. Both the opposite parties contested the case by filing separate written statements and denying therein all the material allegations in the claim petition.
4. The O.P./owner submitted that the case was not maintainable in its present form and law and the facts as mentioned in the claim petition regarding accident are partly correct and partly denied and all the allegations of the claimant in this case are false. Hence, this O.P prayed for dismissal of the case.
5. The O.P./Insurance Company submitted that the case was not maintainable in its present form and law and the accident did not take place due to rash and negligent driving of the offending vehicle by the driver concerned and the offending vehicle met an accident on 20.12.07

and it was lying with B.R. Automobiles for repair and it was released after repair, after 12.1.08 and **no police case was started** for the accident in the present case and all the allegations of the claimant in this case are false. Hence, this O.P prayed for dismissal of the case.

6. The Claimant examined **two witnesses** and proved relevant documents.
7. The O.P. /Insurance Company examined **one witness** and proved some documents.
8. The P.M report, which has been marked as **(Ext. 8)**, the dead body challan **(Ext. 5)** and the death certificate **(Ext. 6)** show the death of the victim of this case.
9. The copy of the Insurance policy, which has been marked as **Ext.3**, shows that at the time of the incident, **the offending vehicle was insured with the O.P, Insurance Company.**
10. **The Tribunal granted compensation as follows :-**

"M.A.C. Case No. 109 of 2008

Dated: 18th March, 2013

..... As per the claim petition the victim used to earn Rs. 3000/- per month from his business but the claimant has not produced any paper in this respect. Hence, I hold that the claimant has failed to prove it. But at present a day labourer earns not less than Rs. 3000/- per month and Rs. 36,000/- per year As such I hold that the annual income of the victim at the time of incident was Rs. 36,000/- and after deduction of 1/3rd of the said amount towards the personal expenses of the victim, the annual income of the victim comes to Rs.24,000/- p.a. and by applying the said

multiplier of 16, the compensation amount comes to Rs.3,84,000/-. In addition, the claimant will get Rs.2,000/- as funeral expenses and Rs.2500/- as loss of estate. In all, the total compensation amount comes to Rs.3,88,500/-.

So, considering the entire materials on record, I hold that the case is maintainable in its present form and law and the claimant has cause of action to file this case and she is entitled to get Rs.3,88,500/- from the O.P. Insurance Company.....

**Sd/-
Judge, M.A.C. Tribunal
2nd Court, Jalpaiguri”**

11. Being aggrieved, the Insurance Company has preferred the present appeal on the ground :-

That as no specific police case was registered in respect of the accident in this case, the claimant is not entitled to any compensation and that the vehicle in this case was not involved in the accident.

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

- i.** The Appellant/Insurance Company has taken a plea that the offending vehicle met with an accident on 20.12.07, that is, prior to the accident in this case which occurred on 03.01.2008.

It is thus the case of the Appellant/Insurance Company that the offending vehicle was lying with B.R. Automobiles for repairs from 20.12.07 till 12.01.2008 and as such could not be the offending vehicle in this case.

- ii. The Insurance Company examined **one witness** as O.P.W.1, who has deposed that till 12.01.2008, the offending vehicle was lying with B.R. Automobiles for repairs. Documents in support have been proved and marked **Exhibit A to C**.
- iii. **The written Complaint** by the father of the victim (not a claimant as not a class I heir in this case) in this case **mentions the number of the offending Vehicle**.
- iv. **Exhibit A** is a letter by the owner to the Insurance Company claiming insurance for the repair of his vehicle, as the owner had met with an accident on 20/12/07, (no specific police case registered), prior to the accident in this case.
- v. **Exhibit B** is the motor claim form filled up and signed by the owner and is dated 28.12.2007. There is no endorsement of receipt that the claim form was deposited/submitted with the Insurance Company.
- vi. **Copies of three receipts**, all dated 12/01/2008, for repairs of the (offending) vehicle have been filed. The receipts are all dated after the date of accident in this case on 03.01.2008.
- vii. At **page 22 of the paper book**, is the acknowledgement card dated 29.02.2008, showing receipt of the written complaint filed by the victim's father on 03/03/2008 by the Superintendent of Police, Jalpaiguri.

viii. It is the case of the Insurance Company that no specific case was started in respect of the accident in this case and as such the claim is not maintainable. But the dead body challan shows an endorsement, as Matigara P.S, UD Case No. 10/08 dated 05.01.2008, started in respect of the accident in this case and the address is that of the Claimant and his son, the victim.

ix. Inspite of the victim's father sending a complaint as to the accident in this case, to the superintendent of police, no action was taken, even though a U.D. case was started, and the said case is normally converted into a specific case.

x. Thus, in view of the above facts and evidence, the tribunal held as follows, on the said contention of the Insurance Company.

“Ext. A to Ext. C collectively do not mention specifically that the said offending vehicle was lying in the said B.R. Automobiles for repair till 12.1.08. Hence, I hold that the O.P. Insurance Company has failed to prove such plea.”

xi. The parent (father) of the victim also sent a complaint to the superintendent of police, A/D card is dated 29.02.2008, when the FIR was not registered. **(Exhibit 1).**

xii. The deadbody challan **(Ext. 7)** and the Post Mortem report **(Ext. 8)** shows that the 24 year old victim/son of the claimant died in the road accident in this case.

xiii. The trial court findings are thus in accordance with law.

13. (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.”

14. **In the present appeal**, the claim was decided by the tribunal on **18th March, 2013**, thus prior to 22nd May, 2018 and compensation of a sum of **Rs. 3,88,500/-** was granted in terms of the old schedule.
15. **Now, in terms of the guidelines** of the Courts, in the judgments, ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.(Supra)*** and ***The New India Assurance Co. Ltd. Vs. Urmila Halder (Supra)***, the **Respondents no. 1 /Claimant** is entitled to compensation of a total sum of **Rs. 5,00,000/- under Section 163A of the 1988 M.V. Act read with the new schedule.**
16. **The present appeal has been filed by the Insurance Company.**
17. Admittedly, the **Appellant/Insurance Company** has deposited an amount of compensation of Rs. 3,88,500/- 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. 5,00,000/- 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.**

18. Taking into consideration, the amount already deposited by the **Appellant/Insurance Company, the Insurance Company** shall deposit the **balance amount of Rs. 1,11,500/-** 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 her identity and payment of *ad-valorem* Court fees, if not already paid.
19. **The appeal being FMA 3127 of 2013 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**
20. No order as to costs.
21. All connected applications, if any, stand disposed of.
22. Interim order, if any, stands vacated.
23. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.
24. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)