

16.04.2024
SL No.217
Court No. 551
Ali

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

**F.M.A.T. 810 of 2018
With
IA No.: CAN/1/2024**

**Ujjwala Singha & Anr.
Vs.
The National Insurance Co. Ltd. & Anr.**

Mr. Amit Ranjan Roy
.....for the appellants/claimants.

Mr. Rajesh Singh
.....for the Insurance Co.

The instant appeal has been preferred against the judgment and award dated 18th April, 2018, passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Tamluk Purba Medinipur, in MAC Case no. 141 of 2014.

The claimants have preferred the instant appeal against the award.

In Ref.:-CAN/1/2024

This is an application for condonation of delay. Heard the learned advocates.

The Stamp Reporter suggests that there are 22 days delays in preferring the instant appeal.

Heard the learned advocate for the appellant perused the body of application being CAN 1 of 2024. Considering the submissions and perusing the grounds mentioned in the body of the application itself, it appears to me that the grounds are sufficient.

Accordingly, the delay in preferring the appeal is hereby condoned.

The appeal is formally admitted.

Register the same.

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

In Ref.: FMAT 810 of 2018

The instant appeal has been preferred against the judgment and award dated 18th April, 2018, passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Tamluk Purba Medinipur, in MAC Case no. 141 of 2014.

The brief fact of the case is that on 11.05.2014 at about 12.30 noon while the victim Chandan Singha along with his father were coming from Panskura side and proceeded towards Tamluk side through Panskura-Tamluk road by a machine van as a passenger and when the said machine van reached near Radhamoni bazaar at that time the driver of a Maruti van bearing No. WB-30H/7130 which was driving the car in a rash and negligent manner, suddenly knocked the back side of the said Machine van with great force. As a result the victim Chandan Singha and his father Sachindra Singha were threw away from the said machine van and fell down on the road. The victim Chindan singha was run over by the offending Maruti and sustained

grievous injury. Thereafter, the victim was shifted to District Hospital of Purba Medinipur where he succumbed to his injuries.

The parents of the victim filed an application before the learned tribunal under Section 163-A of M.V. Act for getting compensation on the ground that the victim died due to the involvement of the vehicular accident. It has also been alleged that the driver of the Maruti van run the vehicle rash and negligent manner which resulted the death of the victim.

The insurer i.e. the Insurance Company contested the claim case by filing written statement.

The learned Tribunal, after hearing the parties and after receiving the evidences has awarded a sum of Rs.2,82,000/- together with @ 6% interest per annum from the date of filing of the claim application as compensation of this case and directed the Insurance Company to initially pay the compensation and a liberty is also given to the Insurance Company to realize the entire awarded sum from the owner of the Maruti van bearing No. WB-30H/7130.

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

Mr. Roy, learned advocate appearing on behalf of the claimants submits that the award passed by the learned tribunal is erroneous and not in accordance with the observation of the Hon'ble Apex Court in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.*** He submits that ***Urmila Halder (supra)***, the Hon'ble Division Bench of this Court has guided that the application filed under Section 163-A of M.V. Act prior to the amendment of 163-A of M.V. Act i.e. May 22, 2018, a fixed amount of compensation amounting to Rs.5,00,000/- has to be awarded in a fatal accident. 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.*** 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.

He further argued that in this case the learned tribunal has adopted the structure formula as enumerated under the old second schedule of Section 163-A of M.V. Act, so the award passed by the learned tribunal is erroneous. He prayed for fixed compensation according to the direction of Hon'ble Apex Court in ***Urmila Haldar.***

Mr. Singh, learned advocate appearing on behalf of the Insurance Company submits that the observation of the learned tribunal regarding the recovery of the awarded amount from the owner of the Maruti van bearing No. WB-30H/7130 may not be altered.

Heard the learned advocate for the appellants also heard the learned advocate for the Insurance Company it appears to me that the learned tribunal has arrived at the conclusion that the Insurance Company has the liberty to recover the awarded amount.

Considering the facts and circumstances of this case and considering the particular fact that the tribunal has been passed for the year 2018 and the owner of the offending vehicle has not preferred any appeal against the said award which approves that the owner has admitted the order passed by the learned tribunal.

Considering the same, I think it necessary to hold that the observation of the learned tribunal regarding recovery of the awarded amount would be unaltered.

It appears that by the observation of the Hon'ble Apex Court in ***Urmila Halder (supra)*** the fixed compensation of this case would be Rs.5,00,000/-. The Insurance Company has already

satisfied the award of Rs.2,82,000/- so the balance award comes to Rs. 2,18,000/-.

The Insurance Company is directed to pay the balance awarded sum of Rs.2,18,000/- together with @ 6% interest per annum from the date of filing of the claim application through the office of the learned Registrar General, High Court, Calcutta within six weeks. On such deposit the claimants are at liberty to receive the same from the office of the learned Registrar General, High Court, Calcutta equally.

After such payment being made the Insurance Company is at liberty to recover/realize the compensation amount from the owner of the offending vehicle i.e. Maruti van bearing No. WB-30H/7130 according to the lay laid down by the Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Swaran Singh.***

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 **FMAT 810 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.)