IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

FMAT 639 of 2013

With

CAN 1 of 2018

(Old No.: CAN 6347 of 2018)

Prasanta Mondal & Ors.

Vs.

The National Insurance Co. Ltd. & Anr.

For the Appellant	:	Mr. Biswarup Biswas.
For the Respondent No. 1/ Insurance Company	:	Mrs. Sucharita Paul.
For the Respondent No. 2/ Owner	:	None.
Hearing concluded on	:	12.09.2024
Judgment on	:	12.09.2024

Shampa Dutt (Paul) , J.

Re : IA No.: CAN 1 of 2018
(Old No.: CAN 6347 of 2018)

1. IA No.: CAN 1 of 2018 (Old No.: CAN 6347 of 2018) preferred under Section 5 of the Limitation Act, pending till date is taken up for hearing. By the instant application, the petitioner has prayed for condonation of delay in filing the present appeal. Considering grounds as made out and in the interest of justice, prayer for condonation of delay is allowed.

2. IA No.: CAN 1 of 2018 (Old No.: CAN 6347 of 2018) is thus disposed of.

3. The present appeal has been preferred by the claimants against the judgment and award dated 30th June, 2012 passed by the learned Judge, Motor Accident Claims Tribunal and the Additional District Judge, 3rd Court, Nadia, Krishnanagar, in MAC Case No. 399 of 2008, **under Section 163A of the Motor Vehicles Act.**

4. The Facts :-

> *"………. The instant application under Section 163A of M. V. Act was filed by the parents, brother and sister of the deceased, Mithun Mondal, for the compensation amounting to Rs.4,32,400/- for the demise of Mithun Mondal who was aged about 20 years at the time of incident and was a marble-mistry who earned Rs.3,300/- per month. When the said deceased and other passengers on 26.03.2008 at about 03:30 hrs. were returning by a bus being No. WB 51/3493, the said bus was plying indiscriminately with heavy speed along the Krishnanagar-Karimpur metal road and the driver of*

> *the said bus pressed sudden brake near the place of Bajitpur Talikhola under P.S Karimpur, as a result the door of the bus opened and the victim and other passengers fell down from the inner side of the said bus and hit a tree. To that effect the victim and other passengers received severe injuries on their persons and victim Mithun Mondal died in the accident on the spot. P.M was duly performed at Saktinagar Hospital. Accordingly, the petitioner being the dependents filed the instant case against the owner of the bus and the Insurance Company of the said bus..............."*

5. Opposite Party/National Insurance Company Limited contested the suit by filing W.O., whereas the owner of the bus neither appeared nor filed any W.O. As such the case has been proceeded against the owner of the bus ex parte.

6. The contents of the written objection filed by the Insurance Company is that the application is not maintainable in its present form and prayer. The petitioner has no cause of action to file the instant case. The application is bad for mis-joinder and non-joinder of the necessary party. The Insurance Company took plea that the petitioners are liable to comply with the provision of Section 330 of Motor Vehicles Rules. This O.P does not admit the petitioners' case. According to the Insurance Company, the claim of the petitioners is excessive, exaggerated and without any basis and the income as alleged by the claimants is not correct and that no such accident occurred as alleged by the petitioners. Accordingly, the petitioners are not entitled to get any compensation as prayed for.

7. The claimants examined two witnesses and proved documents which were marked as **Exhibit-1 to 5.**

8. The Tribunal finally considering the materials on record held as follows :-

"……… MAC Case No. 399 of 2008

Dated 30.06.2012

……….In that discussion, we can accept the observation (2007) 1 WBLR CAL 348 where the Hon'ble Lordship was pleased to hold that a mason like a marble mistry earns Rs.100/- per day or Rs.3,000/- per month and his annual income will be Rs.31,200/- and ½ of the said amount is required to be excluded. As such the contribution to the family will be Rs.31,200/- ÷ 2 = Rs.15,600/- and considering the age of the victim is 20 and multiplier would be 16. Accordingly, the compensatory amount would be Rs.15,600/- x 16 =2,49,600/. Accordingly, the petitioners no.1 and 2 are entitled to get the said compensation…………..

Sd/-
Member, MACT & Addl. District Judge
(3rd Court), Nadia……."

9. From the materials on record, it appears that the claimants in the present case are the parents and siblings of the deceased who was aged about 20 years at the time of accident.

10. The trial Court has held that in absence of any document his income be taken as **Rs.3,000/- per month**.

11. The accident occurred in the year **2008.**

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 30th June, 2012, thus prior to 22nd May, 2018 and compensation of a sum of **Rs. 2,49,600/-** was granted in terms of the old schedule.

14. **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 Appellants/Claimants are 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.**

15. Admittedly, the **Appellants/Claimants** have already received an amount of compensation of **Rs. 2,49,600/-** in terms of order of the Learned Tribunal. Accordingly, the **Appellants/Claimants** are now entitled to the balance amount of compensation of **Rs. 2,50,400/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

16. The **Respondent No. 1/Insurance Company**, thus is directed to deposit the balance amount and the interest as indicated above, by way of cheque before the learned Registrar General, High Court, Calcutta, within a period of six weeks from date. The **Respondent No. 1/ Insurance Company,** shall also pay the interest upon the **sum of Rs. 2,49,600/-** at the rate of 6% till deposit, within the period as specified above.

17. Upon deposit of the aforesaid amount along with interest, learned Registrar General, High Court, Calcutta shall release the amount in favour of the **Appellants/Claimants** in equal proportion, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

18. The appeal being FMAT 639 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 photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)