IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMAT 640 of 2013

With

CAN 1 of 2018

(Old No. CAN 6350 of 2018)

Arjiya Bewa Mondal & Ors.

Vs.

The Oriental Insurance Company Ltd. & Anr.

For the Appellants/ Claimants	:	Mr. Biswarup Biswas.
For the Respondent No.1/ Insurance Company	:	Mr. Rajesh Singh, Ms. Sucherita Pal.
For the Respondent No.2/ Owner	:	None.
Hearing concluded	:	17.09.2024
Judgment on	:	17.09.2024

Shampa Dutt (Paul), J.:

IA No. CAN 6350 of 2018

1. **IA CAN 6350 of 2018** is moved by the learned counsel for the appellant in presence of the learned counsel for the respondent/insurance company praying for condonation of delay in filing the appeal.
2. Considering the averments made in the application and in the interest of justice, the delay is condoned.
3. **The application being CAN 6350 of 2018 stands disposed of.**
4. The present claim appeal has been preferred by Claimants/Appellants against the judgment and award dated 28th September, 2012 passed by the learned Judge, Motor Accident Claims Tribunal and the Additional District Judge, 5th Court, Krishnanagar, Nadia, in MAC Case No. 198 of 2007, **under Section 163A of the Motor Vehicles Act, 1988.**
5. **FACTS :-**

> *"..........The victim Ashmat Mondal was travelling himself in a bus having registration no. WB 51-6768 plying on the Krishnagar-Karimpur Coalter Road on 25.02.2007 at about 11.00 a.m. with a high and excessive speed. The driver of the bus suddenly pressed the brake near Taranipur Mathpara to save an old lady who suddenly had come in front of the bus. The victim fell down from the roof of the bus. The victim sustained severe injuries and he was immediately removed to Tehatta Hospital and he was transferred to Nadia District Hospital at Saktinagar for better treatment. The victim, however, died on 26.02.2007 in the hospital. The victim was a self employed person having monthly income of Rs.3,150/- at the time of his death. The petitioners have claimed*

compensation for the said premature death of the victim as his legal heirs..........."

6. The O.P. No. 2 the United Insurance Company Ltd. entered appearance and contested the case by filing written objection thereby denying all the material facts contending, inter alia, that the case is not maintainable, barred by limitation, barred by principles of estoppel, waiver and acquiescence.

7. The specific case of the O.P. Insurance company is that the bus being registration No. WB 51-6768 is not liable for the accident and the said vehicle was not driven with a high speed and in a rash and negligent manner. The claim of compensation is exaggerated, baseless, imaginary and without any mathematical calculation. The instant is liable to be dismissed with cost.

8. The Claimants have examined himself and one eye witness in the present case.

9. Relevant documents have been marked as Exhibits in the present case being **Exhibits 1 to 5.**

10. The learned Tribunal considering the materials on record held as follows :-

"........MAC Case No. 198 of 2007

Dated 28th September, 2012

........I feel inclined that the deceased used to earn Rs.100/- per day. I have already discussed that the deceased used to work for twenty days in a month in average. The monthly income of the deceased, thus, comes as Rs.2,000/-. The annual income of the deceased, therefore, comes as to Rs.2,000x12 = Rs.24,000/-. The said amount shall be reduced by one third for the expenses which the

deceased/victim would have incurred towards his maintenance had he been alive. The net annual income of the deceased, therefore, comes to Rs.16,000/-. By applying multiplier 18, the total loss of dependency is worked to Rs.2,88,000. In addition to that, the claimants are also entitled to get Rs.2,000/- funeral expenses and Rs.2,500/- for the loss of estate. The Petitioner No. 1 being the wife of the deceased is also entitled to get Rs.5,000/- as loss of consortium. Thus, the total award of compensation is worked out to Rs.2,97,500/-. The O.P. Insurance company is liable to pay the said compensation to the claimants with interest @ 6% per annum in case of default to pay the same within the stipulated period…..

Sd/-
Member
Motor Accident Claim Tribunal
Additional District Judge,
5th Court, Nadia……….”

11. Being aggrieved the present appeal has been preferred by the Claimants/Appellants on the ground:-

That the learned Tribunal did not consider the actual income of the deceased and, as such, awarded compensation on the basis of notional income, for which the appellant has been denied 'Just Compensation'.

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 28th September, 2012, thus prior to 22nd May, 2018 and compensation of a sum of Rs.2,97,500/- 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 the amount of compensation of **Rs. 2,97,500/-** in terms of order of the Learned Tribunal. Accordingly, the **Appellants/Claimants** are now entitled to the balance amount of compensation of **Rs. 2,02,500/-** 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**, 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. 2,97,500/-** at the rate of 6% till deposit if not already paid, within the period as specified above.

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

18. The appeal being FMAT 640 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.)