

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMAT No. 694 of 2014

Basanti Das & Anr.

Vs

The Oriental Insurance Company Ltd. & Anr.

For the Petitioners : Mr. Amit Ranjan Roy.

**For the Respondent No. 1/
Insurance Company** : Ms. Sucharita Paul.

**For the Respondent No. 2/
Owner** : None.

Hearing concluded on : 05.08.2024

Judgment on : 14.08.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the claimants against the Judgment and Award passed on 29th November, 2012, by Member, Motor Accident Claims Tribunal and Additional District Judge, 2nd Court, Nadia in MAC Case No. 90 of 2010, **under Section 163A of the Motor Vehicles Act, 1988.**

2. FACTS :-

“On 30.01.2010 at about 7 a.m. while one Astam Das alias Faring, a mason by profession was coming down the road leading to Krishnanagar from Nabadwip, when he was dashed by a speeding lorry registered as W.B. 37A/0414 which was proceeding towards Krishnanagar from Nabadwip and as a result, Astam Das died on the spot. He was a bachelor and 26 years old young man who used to earn Rs. 40,000/- per annum. It is further contended that police was informed about the accident and Kotwali P.S. Case No. 60/10 dated 30.01.10 was registered. The claimant no.1 being the mother and claimant no.2 sister of the victim are the claimants.”

3. The owner of the offending vehicle did not contest the case while the O.P./Insurer contested the case by filling written objection denying all the material contentions made by the claimants. According to the O.P. /Insurer, the application is bad for mis-joinder and non-joinder of parties. It is mala fide and misconception. The O.P./Insurer denied that the offending vehicle No. W.B. 37A/0414 was at all involved in the alleged accident. According to the O.P./Insurer, the victim did not succumb to injuries caused by motor vehicle in use. The O.P./Insurer prayed for dismissal of the case.

4. The Claimant No.1 has examined herself as a witness. Relevant documents were proved and marked **Exhibit 1 to 4.**

5. **The tribunal granted compensation as follows :-**

“MAC Case No. 90 of 2010

Dated: 29th November 2012

The claimant no.1 while adducing evidence as P.W.1 has not been able to prove the income of the victim. Therefore, we can presume that the victim used to earn Rs. 3000/- per month. Since the victim was a bachelor, it should be held that 50% of his income he used to spend for himself and Rs. 50% of his income was the contribution towards his family which was lost. From exhibit-4, I find that the victim was 25 years old. Therefore, I take “17” as multiplier to compute the extent of compensation and the compensation comes to Rs. 3,06,000/- and in addition to that the claimant No.1 is entitled to Rs. 2500/- towards funeral expenses and Rs. 2000/- towards loss of estate. Thus, the total amount of compensation comes around to Rs. 3,10,500/-. As the vehicle involved with the accident was insured with the O.P./Insurer, the O.P./Insurer is under obligation to indemnify the owner.

Thus, the O.P./Insurer is liable to pay such compensation.

**Sd/-
Member,
Motor Accident Claim Tribunal &
Addl. District Judge, 2nd Court, Nadia”**

6. The present case is under **Section 163A of the M.V. Act.**

7. (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.”*

8. **In the present appeal**, the claim was decided by the tribunal on **29th November, 2012** (thus prior to 22nd May, 2018) and compensation of a sum of **Rs. 3,10,500/-** was granted in terms of the old schedule.
9. **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.**
10. Admittedly, the **Appellants/ Claimants** have already received the amount of compensation of **Rs. 3,10,500/-** in terms of order of the Learned Tribunal. Accordingly, the **Appellants/ Claimants** are now entitled to the balance amount of compensation of **Rs. 1,89,500/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**
11. Taking into consideration, the amount already received by the **Claimants/Appellants**, the **Respondent No. 1/Insurance Company** shall deposit the balance amount **of Rs. 1,89,500/-** along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the **Claimants/Appellants** (wife and daughter of the deceased) 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.

12. The appeal being FMAT No. 694 of 2014 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

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

14. There will be no order as to costs.

15. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)