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

**21.05.2024**
**SL No.15**
**Court No.25**
**Ali**

**F.M.A. 2343 of 2005**

**Sri Mahadeb Choudhury & Anr.**
**Vs.**
**The Oriental Insurance Company Ltd. & Anr.**

Mr. Krishanu Banik
...........for the appellants/claimants.

Mr. Parimal Kumar Pahari
......for the respondent/Insurance Co.

The instant appeal has been preferred against the judgment and award dated 29th day of July, 2005, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, Fast Track 5th Court, Malda, in MAC Case no. 147 of 2002.

The brief facts of this case is that a student of twelve years old died in a road traffic accident on 25th January, 2002, the parents filed an application before the learned Tribunal under Section 163-A of M.V. Act for getting compensation.

The learned Tribunal has awarded a compensation amounting to Rs.1,50,000/- in favour of the claimants and directed the owner of the offending vehicle to pay the compensation.

It is pertinent to mention herein that the claim case was contested by the Insurance Company by filing written statement.

On perusing the materials the learned tribunal is of view that the driver of the offending vehicle had no valid driving licence at the time of accident. Accordingly, the Insurance Company was not held liable to pay the compensation.

Mr. Banik, learned advocate appearing on behalf of the appellants/claimants submits that the award passed by the learned tribunal is erroneous as per view of the Hon'ble Apex Court in ***New India Assurance Company Ltd. Vs. Urmila Halder.*** He submits that the amendment of Section 163-A enable the claimants, wherein death has been occurred, to get fixed compensation amounting to Rs. 5,00,000/-. By virtue of the said judgment he prayed for enhancement of compensation.

Mr. Banik further argued that the learned tribunal has directed the owner of the offending vehicle to pay the compensation but by virtue of decision of Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Swaran Singh*** as well as ***Shamanna Vs. The Divisional Manager***. The ***Oriental Insurance Co. Ltd***, as the offending vehicle was well covered under the policy of Insurance Company at the time of accident. The Insurance Company may be directed to pay the compensation initially, thereafter; they may have the liberty to recover the same from the owner of the offending vehicle by a separate proceeding.

Mr. Pahari, learned advocate appearing on behalf of the Insurance Company submits that the instant appeal is infructuous. The claimant has not preferred any execution case before the learned tribunal to execute the award. However, they preferred the instant appeal in the year 2005 but the appeal was proceeded in delay by the claimant themselves. So, the appellants/claimants are not entitled to get any interest on the awarded amount due to their laches in proceedings the instant appeal. Mr. Banik conceded that the interest portion may waive.

Heard the learned advocates perused the materials on record. It appears that the learned tribunal has awarded a sum of Rs. 1,50,000/- towards the compensation of this case.

It appears that the amendment of Section 163-A of M.V. Act had taken effect from 22$^{nd}$ May, 2018. The Division Bench of this Court in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.*** has held that the Notification dated 22$^{nd}$ May, 2018 should have a retrospective effect and it would be applicable all pending appeals and applications under Section 163-A of M.V. Act. The said view has been challenged by the Insurance Company before the Hon'ble Apex Court wherein the Hon'ble Apex Court has upheld the decision of Division Bench of this Court. The observation of Hon'ble Apex Court passed in ***New India Assurance Company Ltd. Vs. Urmila Halder*** is read as follows:

> ***"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 Rs. 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".***

Considering the observation of Hon'ble Apex Court it appears to me that in this case the claimants are entitled to get the fixed compensation amounting to Rs. 5,00,000/-.

Mr. Pahari submits that the claimants are not diligent to proceed with the instant appeal. Though it has been filed in the year 2005 but the same was not dispose of till today.

Considering the submissions, it appears to me that the claimants have taken steps regarding calling for LCR and filed requisites with the concerned department to issue notice upon the respondents in the year 2005 itself. The notice has been served upon the respondents in the year 2007. However, it appears that matter was adjourned before the concerned Bench having determination on several grounds, either the present appellant did not appear or prayed for adjournment.

Considering the circumstances, it appears to me that, in this case the claimants are not diligent to proceed with this appeal thus they are not entitled to get any compensation under the head of interest. The claimants shall only get the interest from the date of filing of the claim application till the date of award passed by the learned tribunal.

It appears from the LCR that the offending vehicle was well covered under the policy of Insurance Company at the time of alleged accident. By virtue of the decision of the Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Swaran Singh*** as well as in ***Shamanna (supra)*** the Insurance Company is directed to pay the compensation and they may have the liberty to recover the same from the owner of the offending vehicle according to the law laid down by the Hon'ble Apex Court in ***Swaran Singh (supra).***

Accordingly, the award passed by the learned tribunal is hereby modified.

The just and proper compensation comes to Rs.5,00,000/- together with interest @ 6% per annum from the date of filing of the claim application to the date of passing of the award by the learned tribunal. The Insurance Company is directed to pay the compensation through the office of the learned Registrar General, High Court, Calcutta within ten weeks from the date of passing of this order. On such deposit the claimants are at liberty to receive the same equally following the norms of identification and certification subject to ascertainment of payment of deficit Court Fees, if any.

The office of the learned tribunal shall act upon the certified copy of this order to receive the deficit court fees, if any.

LCR be sent down at once. The petitioner is at liberty to deposit the Special Messenger cost so that the LCR be sent down through the Special Messenger cost.

Insurance Company is at liberty to take a copy of Insurance Policy (exhibit-"C") for the purpose of compliance of the instant order.

Accordingly, the application being **FMA 2343 of 2005** 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.)**