

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMA No.737 of 2023
Putul Halder & Ors.

v.

National Insurance Co. Ltd. & Anr.

with

CAN 1 of 2018 (Old No.CAN 8430 of 2018)

Mr. Joydeep Bhattacharya ... for the appellants/claimants.

Mrs. Sucharita Paul

Mr. Shibashis Nandi ... for the respondent no.1/insurance company.

Heard on: July 3, 2024.

Judgement on: July 26, 2024.

Ananya Bandyopadhyay, J:- The instant appeal has been preferred by the appellants against the Judgment and award dated 15th May, 2018 passed by the learned Motor Accident Claim Tribunal & Additional District Judge, Fast Track 5th Court, Alipore 24-Parganas (South) in M.A.C. Case No.33 of 2015.

The victim lady, Renubala Halder, mother of the appellants/claimants incurred an accident being hit by a vehicle being a Bus bearing No. WB 02AD 8302 on 10th May, 2015 at about 11-30 hours. The accident occurred at Ramlal Bazar Auto Stand. Subsequently, the victim was transmitted to Dishan Hospital wherein she was admitted and discharged on 15th May, 2025. She was further admitted in CNMC Hospital on the same day and expired on 22nd May, 2015.

The appellants/claimants had filed an application under Section 163A of the Motor Vehicle Act, 1988 claiming a sum of Rs.6,50,000/- on account of death of Renubala Halder, mother of the appellants/claimants, as compensation owing to the aforesaid accident. The learned Tribunal after recording the evidence, disposed of the issues framed and awarded a sum of Rs.2,01,000/- along with an interest @ 7% per annum from the date of filing of the claim application till the realization of the awarded amount.

The learned advocate for the appellants/claimants indicated an error on the part of the learned Tribunal in deducting half of the amount from the actual income on account of negligence on her part.

In view of the provisions under Section 163A of the Motor Vehicles Act the learned Tribunal has erroneously deducted the aforesaid amount to the tune of Rs.1,56,000/- as the element of contributory negligent is not peculiar to the provisions of the aforesaid section.

Considered the contrary submissions of the Learned Advocate for the respondent No.1/insurance company.

In view of the judgment of the Hon'ble High Court in Urmila Halder v. The New India Assurance Company Ltd. and the same being affirmed by the Supreme Court on 08/02/2024 and the notification dated 22nd May, 2018, the appellants/claimants are entitled to Rs.5,00,000/- of just compensation with regard to second schedule 1(a) and notification dated 22nd May, 2018 and also the aforesaid observations of the High Court at Calcutta and the Hon'ble Supreme Court.

The second schedule 1(a) is as follows: -

*“Fatal Accidents:
Compensation payable in case of Death
shall be five lakh rupees.”*

The learned advocate for the respondent No.1/insurance company submitted that the appellants have already withdrawn a sum of Rs.2,01,000/- along with 7% interest per annum. The appellants/claimants are entitled to a sum of Rs.2,99,000/- along with 6% interest per annum to be paid from the date of filing of the application under Section 163A of the Motor Vehicles Act till the date of realization by the respondent/insurance company.

The occurrence of the accident involving the offending vehicle has been proved. The driving licence, route permit, insurance police etc. have not been disputed.

The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 2,99,000/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.

The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants in equal proportion as mentioned in the award granted by the learned Motor Accident Claim Tribunal & Additional District Judge, Fast Track 5th Court, Alipore 24-Parganas (South) in M.A.C. Case No.33 of 2015 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Courts fees.

The instant appeal along with CAN 1 of 2018 (Old No. CAN 8430 of 2018) is disposed of accordingly.

S.R.

(Ananya Bandyopadhyay, J.)