

In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

FMAT(MV) 480 of 2022
Jaba Mandal @ Puja Mandal.
v.

Bajaj Allianz General Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan roy
Ms. Juin Ghosh

... for the appellant/claimant.

Mrs. Sucharita Paul

... for the respondent no.1/insurance company.

Heard on: 24th September, 2024.

Judgment on: 24th September, 2024.

Ananya Bandyopadhyay, J:-

The learned advocates for the appellant/claimant as well as respondent Nos. 1 are present.

The instant appeal has been preferred by the appellant/claimant against the Judgment and award dated 15th July, 2022 passed by the learned Judge, Motor Accident Claims Tribunal and Additional District Judge, 10th Court, Alipore, 24-Parganas(South) in M.A.C. Case No.36 of 2014.

The learned advocate for the appellant/claimant submitted that the respondent Nos.2 the owner of the offending vehicle did not contest before the learned tribunal.

The learned advocate for the appellant/claimant submitted to have filed an application being CAN 1 of 2022, *inter alia*, stating notice to have been

served upon the respondent Nos.1 and 2 through speed post with track report annexed thereto mentioned the item to have delivered.

The learned tribunal in the impugned judgment and award as follows:

“ In the application under Section 163A of the M.V. Act as well as in evidence, it has been stated that the victim worked for the O.P. No.1 as a ‘khalasi’ in the offending vehicle and had a monthly salary of Rs. 3000/-. No evidence whatsoever was adduced to prove this fact.

The PW.1 has filed a document (Exhibit No.7) to prove the age of the victim at the time of the accident. According to the death certificate of the victim. (Exhibit No.7), the age of the victim at the time of the accident was 18 years.

Since 163A of the Act provides for compensation to a victim or his heirs (in case of death) if the accident involved a motor vehicle. In the instant case, the offending vehicle being a motor vehicle was involved in the accident. As such the claimant of this case being the heir of the victim is entitled to compensation under Section 163A of the Act. Now, the question arises whether the O.P. No.2 would be liable to pay the compensation amount even though the vehicle was within insurance coverage on the date of the accident? The answer would be in the negative. The victim was travelling on the roof on the driver’s cabin as is the case of the claimant. It is absolutely in contravention to the W.B.M.V. Rules and the insurance company cannot be made liable to pay compensation in the event of such breach. The O.P. No.1 being the owner of the offending vehicle, on the other hand, has permitted such violation of the motor vehicle rules and, as such, is entitled to pay compensation”.

It appeared that the learned tribunal had imposed liability upon the owner of the offending vehicle to grant compensation to the appellant/claimant with regard to the death of the victim.

The learned advocate for the respondent Nos.1/insurance company submitted that the victim had been a gratuitous passenger who travelled on the roof of mini truck and the insurance company was not liable to grant compensation since the learned tribunal had its judgment exonerated the respondent Nos.1/insurance company to pay the compensation amount.

The learned advocate for the appellant/claimant admitted the fact the victim to have been travelled the mini truck through its roof and relied upon the observation of the Hon'ble Supreme Court in *National Insurance Co. Ltd. vs. Baljit Kaur & Ors*¹.

The paragraph Nos. 21 of the said judgment as follows:

“The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will sub served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding”.

An application under Section 163A of the Motor vehicles Act was filed by the appellant/claimant seeking compensation owing to the death of the victim while the same travel as passenger on the roof of the offending vehicle i.e. mini truck bearing registration No. WB-41E 7633 which incurred an accident on 04.05.2011. The victim had been a ‘khalasi’ of the offending vehicle entrusted to

¹ (2004) 2 SCC

take care of goods of the driver's cabin and was seated on the roof thereof. However, the offending vehicle was on its move the victim was knocked off the vehicle and thereafter sustained injuries and succumbed to the same on 05.05.2011 at N.R.S. Medical College and Hospital.

The learned tribunal after disposed of the issues and framed upon appreciation of the available evidence on record both oral and documentary and computed the compensation amount considering the salary of the victim to be Rs. 3000/- per month in absence of any documentary prove.

The occurrence of the accident, involving the offending vehicle has been proved. The driving licence, route permit, insurance police etc. have not been disputed by the learned advocate for the respondent Nos.1/insurance company.

Considering the judgment of the Hon'ble High Court in Urmila Halder v. The New India Assurance Company Ltd², the same being affirmed by the Supreme Court in Special Leave Petition³ and the notification dated 22nd May, 2018. the appellant/claimant is entitled to Rs.5,00,000/- towards 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 impugned judgment passed by the aforesaid tribunal is modified to the extent of Rs. 5,00,000/- along with interest to be paid at the rate of 6 % per

² 2019(2)TAC 143

annum from the date of filing of the application till the date of its actual realization.

The Learned Advocate for the respondent Nos. 1/insurance company is to deposit the balance sum of Rs. 5,00,000/- 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 two weeks after vacation from the date of passing of this order.

On receipt of the said amount, the office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellant/claimant as mentioned in the award granted by the learned Judge, Motor Accident Claims Tribunal and Additional District Judge, 10th Court, Alipore, 24-Parganas(South) in M.A.C. Case No.36 of 2014 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Courts fees.

In view of the decision of the Hon'ble Supreme Court in *National Insurance Co. Ltd. vs. Baljit Kaur & Ors (supra)* the respondent Nos.1/insurance company shall recover the said amount from the owner of the vehicle.

The instant appeal is disposed of accordingly.

The lower court records be sent to the concerned tribunal forthwith

Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

c.m.

(Ananya Bandyopadhyay, J.)

³ Special Leave Petition(Civil) No. 6260 of 2019

