IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

14.03.2024
SL No.24
Court No. 551
Ali

F.M.A.T. 1268 of 2018

Kamrul Islam & Anr.
Vs.
The New India Assurance Co. Ltd. & Ors.

Mr. Krishanu Banik,
Mr. Tathagata Banik
……for the appellants-claimants.

Mr. Parimal Kr. Pahari
………..for the respondent-insurance Co.

The instant appeal has been preferred against the judgment and award dated 20th day of September, 2018, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, FTC, Balurghat, Dakshin Dinajpur, in MAC Case no. 187 of 2016.

The brief fact of the case is that one young girl student of 12 years died in a road traffic accident. Her parents filed an application before the learned Tribunal under Section 163-A of M.V. Act for getting compensation on the ground that the deceased died due to rash and negligent driving of the driver of the offending vehicle.

The claim case was contested by the Insurance Company by filing written statement.

The learned Tribunal after hearing the parties and after receiving the evidences has awarded a sum of Rs.2,04,500/- towards the compensation and directed the Insurance Company to pay the compensation.

Being aggrieved by and dissatisfied with the said award the claimant has preferred the instant appeal for enhancement of the award.

Learned advocate, Mr. Tathagata Banik appearing on behalf of the appellant submits that the award passed by the learned Tribunal is erroneous. The award under Section 163-A of M.V. Act is covered by the decision of Hon'ble Apex Court passed in ***New India Assurance Company Ltd. Vs. Urmila Halder*** the Hon'ble Apex Court has guided that the application filed under Section 163-A of M.V. Act prior to the amendment of 163-A i.e. May 22, 2018, a fixed amount of compensation amounting to Rs.5,00,000/- has to be awarded in a fatal accident. In this case, he further argued that the observation of Hon'ble Apex Court has affirmed the decision of Division Bench of this Court passed in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors. (FMA 446 of 2010).*** He submits that the learned Tribunal should have awarded a compensation of Rs.5,00,000/- and he prayed for necessary modification of the award.

Learned advocate Mr. Parimal Kumar Pahari appearing on behalf of the Insurance Company submits that the law has been settled by the decision of Hon'ble Apex Court in ***New India***

Assurance Company Ltd. Vs. Urmila Halder so necessary order may be passed.

Mr. Parimal Kumar Pahari further submits that though a distinct separate view has been adopted by Hon'ble Apex Court in ***Ram Khilari vs. The United India Insurance Com.;*** but the law laid down by the Hon'ble Supreme Court ***Urmila Halder (supra)*** hold the field.

Heard the learned advocate, perused the award passed by the learned Tribunal; it appears that the alleged accident happened on 16.10.2016. The claim application was filed in the year 2016. Thus, it appears that the claim application is filed prior to the amendment of provision under Section 163-A i.e. May 22, 2018.

The Division Bench of this Court in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.*** has specifically dealt with the issue as follows:-

> ***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?***

After through discussion the Hon'ble Division Bench has come to an opinion that:-

"117. Now, if such a claim application comes up before a Tribunal for consideration post May 22, 2018 where all the five conditions as in the preceding paragraph are fulfilled, proceeding by our reasoning it can award only a lump-sum amount of Rs. 5,00,000.00, which would obviously be lesser than what could have been determined under the old schedule. Considering the language in which sub-section (1) of Section 163-A is couched, the Second Schedule as on date of the award invariably has to be looked into and a lesser sum, if required, would have to be determined as payable to the legal heirs of such a victim. It is, therefore, not correct to contend that since the new schedule intends to provide greater relief compared to the relief available under the old schedule, following the new schedule would be onerous for the insurance companies in all cases.

Conclusion

118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post May 11, 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 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".

The ***New India Assurance Co.*** has challenged the order of Division Bench before the Hon'ble Apex Court and the Hon'ble Apex Court after hearing the parties has passed the order on February 8, 2024 as follows:-

> ***"9. Having considered the matter, we do not find any reason to interfere with the judgment impugned. With regard to the judgments of this Court relied upon by learned counsel for the appellant, having gone through the same we find that they are distinguishable from the facts of the present case and thus, the ration of those cases would not apply in the present case.***
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> ***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".

So, after considering the opinion of the Hon'ble Apex Court in ***New India Assurance Company Ltd. Vs. Urmila Halder*** it appears that the prayer of enhancement of compensation by the appellant is required to be answered in affirmative. In this case, considering the same, the award passed by the learned Tribunal is herby modified. The just and proper compensation in this case would be Rs.5,00,000/-.

The claimant has already received an amounting of Rs. 2,04,500/- so after deduction the balance award comes to Rs. 2,95,500/-. The Insurance Company is directed to pay the balance awarded sum together with @ 6% interest per annum from the date of filing of the claim application through the office of the learned Registrar General, High Court, Calcutta within six weeks. After such deposit the claimants are at liberty to receive the same equally on usual terms and conditions 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.

The instant **FMAT 1268 of 2018** 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.)