

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 159 of 2017

Ganesh Ghosh & Others

Versus

Shriram General Insurance Company Limited & Another

IN

FMAT 1272 of 2016

Smt. Kakon Ghosh @ Kakan Ghosh & Anr.

Vs.

Shriram General Insurance Company Limited & Another

With

FMA 1530 of 2017

Shriram General Insurance Company Limited

Vs.

Moumita Ghosh & Others

For the Appellants : Mr. Krishanu Banik, Adv.
Mr. Tathagata Banik, Adv.

For the Respondent No. 1/Insurance Company

: Mr. Rajesh Singh, Adv.

Heard on : 22.04.2024

Judgment on : 19.07.2024

Ajay Kumar Gupta, J:

1. Two appeals being FMA 159 of 2017 and FMAT 1272 of 2016 have been filed by two different sets of appellants against the self-same judgment and award dated 15th July, 2016 passed in MAC Case No. 253 of 2013 and MAC Case No. 254 of 2013 respectively by the learned Additional District & Sessions Judge, 3rd Court -cum- Learned Judge, MAC Tribunal Court, Hooghly, Sadar, thereby the learned Tribunal Judge dismissed both the claim cases on contest against respondent/insurance company without any order as to cost. The learned Tribunal has given liberty to the claimants to file MAC case against the

owner of the trekker being registration no. WB-19-3703 or the insurance company of the trekker, if any, with a prayer for compensation.

2. The other appeal being FMA 1530 of 2017 has been filed by the Shriram General Insurance Company against the judgment and awarded dated 7th May, 2016 passed by the learned Additional District & Sessions Judge, 1st Court, Hooghly-cum- learned Judge, Motor Accident Claims Tribunal in MAC Case No. 252 of 2013 thereby the learned Tribunal Judge allowed the case ex parte against the owner and on contest against the respondent/insurance company with costs. The learned Tribunal awarded a sum of Rs. 4,17,500/- with simple interest @ 6% per annum over the amount from the date of filing of the case till the final realization of the compensation amount so awarded.

3. All the three appeals have been filed against the same vehicle and insurance company since all the appeals arise from the self-same accident, which was occurred on 19.08.2013 at about 8.30 pm on Durgapur Express Highway Road at Amira

More, under Dadpur P.S. where several persons were died. Prior to the said accident, one trekker being registration No. WB-19-3703 along with other 15/16 persons going towards Singur and when it reached at the above noted place, at that time, same bound stationary truck being registration no. AP-16TW-6254 (Lorry) was standing by the side of the road without observing traffic rules and regulations and by putting on back light of the said truck, as a result the said driver of the trekker being understood the running vehicle dashed against the back-side of the said truck. As a result, the accident took place and several passengers of the said trekker were received severe injuries on their persons and immediately they were removed to Chinsurah Imambara Sadar Hospital where the deceased Bharati Ghosh, Kanai Ch. Ghosh and Tarun Kr. Ghosh died in the same hospital after a while. A specific criminal case was registered at Dadpur P.S. being Case No. 130/2013 dated 20.08.2013 u/s 279/337/338/304A/427 of the IPC against the driver of the offending vehicle. Due to sudden demise of the victims, the appellants being legal heirs and representatives herein suffered

a great loss and they have filed claim case under Section 163A of the Motor Vehicles Act, 1988 for compensation. Out of these three aforesaid MAC cases, one case has been allowed by the learned Tribunal awarding a compensation to the tune of Rs. 4,17,500/- along with simple interest @ 6% per annum over the compensation amount from the date of filing of the case till full realization. Barring the aforesaid case, other two claim cases have been dismissed on contest.

4. It is relevant to mention here that out of the above three appeals, one appeal being FMA 1530 of 2017 was allowed by a Co-ordinate Bench of this Court vide judgment and order dated 18.01.2024 thereby awarded a sum of Rs. 4,41,500/- in favour of the respondents. The said amount should be borne by owner or Insurance Company of both the vehicles as both vehicles were involved in the said accident in equal share. The Co-ordinate Bench also directed the appellant i.e. Shriram General Insurance Company Limited to recover the 50% of the compensation from the owner or the insurer of the tracker bearing no. WB-19/3703 through a separate proceeding before

the appropriate forum. Accordingly, there is no need to pass further judgment and order in the said appeal. Accordingly, FMA 1530 of 2017 is, thus, sent back to the department with above observations.

5. Whereas other two appeals i.e. FMA 159 of 2017 and FMAT 1272 of 2016 are taken up together for passing a common judgment as both the cases arise from the same judgment and award dated 15th July, 2016 passed in MAC Case No. 253 of 2013 and MAC Case No. 254 of 2013 respectively by learned Additional District & Sessions Judge, 3rd Court -cum- Learned Judge, MAC Tribunal Court, Hooghly, Sadar.

SUBMISSIONS ON BEHALF OF THE APPELLANTS:

6. The learned advocates appearing on behalf of the appellants submitted that the appellants of both the appeals had filed an application for compensation under Section 163A of the Motor Vehicles Act, 1988 and in view of the latest amendment of the Motor Vehicles Act, appellants are entitled to get compensation to the tune of Rs. 5 lakhs in both the appeals

as minimum compensation towards death of the deceased, namely, Bharati Ghosh and Kanai Ch. Ghosh.

7. The learned advocates appearing on behalf of the appellants referred two decisions. Firstly, passed by Division Bench of this Hon'ble Court in **Urmila Halder vs. New India Assurance Co. Ltd. & Ors. (FMA 446 of 2010)**¹ wherein the Division Bench of this Court has held that total sum of Rs. 5,00,000/- in a fatal accident falls under Section 163A of the Motor Vehicles Act, 1988 should be paid. It has retrospective effect though the amendment has come into effect on and from 22nd May, 2018 as the application pending prior to the amendment shall have retrospective effect.

Secondly, a judgment passed in **New India Assurance Co. Ltd. -vs.- Urmila Halder** in **Special Leave Petition (Civil) No. 6260 of 2019**, the Hon'ble Supreme Court has affirmed the view taken by this Court and further held as under:

“The order of the High Court is well discussed and we agree with the view taken. We may, however,

¹ **2018 SCC Online Cal 11751, 2019 (2) TAC 143 (Cal)**

add that a beneficial legislation would necessarily entail the benefit to be passed on 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)."

8. It is further submitted that the learned Tribunal committed an error in dismissing both the claim applications though the proceedings filed under Section 163A of the Motor Vehicles Act are based on 'no fault liability'. In such a case, there is no need to prove the rash and negligent driving of the driver of the offending vehicle, only involvement of the vehicle in the accident and due to such accident, the victims expired is only sufficient to prove for the compensation. But the learned Tribunal has committed an error and observed that the cause of

filing the claim application should not against the truck being registration no. AP-16TW-6254 (Lorry) but it ought to have been filed against owner and insurance company of the trekker being registration no. WB-19-3703 who was solely responsible for the accident.

SUBMISSIONS ON BEHALF OF THE INSURANCE COMPANY:

9. On the other hand, learned counsel appearing on behalf of the Insurance Company submitted that the truck was in stationary position whereas due to rash and negligent driving of the driver of the trekker, the said accident was taken place. Two vehicles were involved in the said accident, one was stationary position another was in running condition. When a case filed under Section 163A of the Motor Vehicles Act, there is no need to prove rash and negligent driving of the driver of the offending vehicle, only involvement and death of the victims are necessary. Where two vehicles were involved in the said accident as such both the insurers and owners of both vehicles are liable for the compensation in equal shares and after hearing the similar facts and circumstances of the case, the Co-

ordinate Bench of this Court has given liberty to the present insurance company, Shriram General Insurance Company Limited to recover 50% of the compensation from the owner or the insurer of the tracker bearing no. WB-19/3703 through a separate proceeding before the appropriate forum. Learned advocate also prays for similar judgment and order in the instant appeals as passed by the learned Co-ordinate Bench of this High Court.

DISCUSSION, ANALYSIS AND CONCLUSION BY THIS COURT:

10. Heard the submissions of the parties and on perusal of the record this Court finds these instant appeals are squarely covered by the judgment of the Hon'ble Supreme Court passed in **The New India Assurance Co. Ltd Versus Urmila Halder** in **Special Leave Petition (Civil) No. 6260 of 2019**. Hence, the claimants of both the appeals are entitled to get a fixed compensation of Rs. 5,00,000/- which shall carry interest @ 6% per annum from the date of filing of the claim applications till final payment on account of death of deceased, namely, Bharati

Ghosh and Kanai Ch. Ghosh caused by Motor Vehicle Accident as there is no dispute about the involvement of the vehicles and the death of the victims caused due to accident as claimed and proved. There is also no dispute about the validity of Insurance Policy of the offending vehicle with the Respondent No. 1/Insurance Company on the date of accident.

11. The Respondent No. 1/Insurance Company is directed to pay the compensation amount of Rs. 5,00,000/= for each case together with interest as indicated above by way of cheque before the Office of Learned Registrar General, High Court, Calcutta within a period of six weeks from this date. The Insurance Company is also given at liberty to recover the 50% of the compensation from the owner or the insurer of the tracker being registration no. WB-19-3703 through a separate proceeding before the appropriate forum.

12. Learned Registrar General, High Court, Calcutta, upon deposit of the compensation amount of Rs. 5,00,000/= in each case together with interest on the awarded compensation amount as indicated above, shall release the amount in favour

of the appellants/claimants of both the appeals in equal share upon proper identification and subject to verification of the payment of ad valorem Court fees on the total compensation amount, if not already paid.

13. With the above observations, the instant appeals being **FMA 159 of 2017** and **FMAT 1272 of 2016** are, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.

14. Let a copy of this Judgment along with Lower Court Records, if any, be sent back to the learned Court below forthwith for information.

15. All parties shall act on a server copy of this judgment and order uploaded from the official website of High Court at Calcutta.

16. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)