

12.06.2024
Ct. 3
D/L 22
Ab/sn

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

FMAT 15 of 2019

Sumila Barman & Ors.

-VS-

National Insurance Company Ltd & Ors.

Mr. Tamal Kr. Sen,
Mr. Milan Ch. Laskar,
Ms. Priyanka Dey

... for the appellants-claimants

Mr. Gobinda Saha
... for the respondent no.2- insurance company

Paper book filed on behalf of the appellants-claimants is taken on record.

Perused the report of Deputy Registrar,
High Court, Calcutta, Circuit Bench, Jalpaiguri.

It is found from the aforesaid report that
the name of the respondent no.1-National Insurance
Co. Ltd. has been wrongly arraigned twice.

In view of the above, learned advocate for
the appellants-claimants is directed to delete the
name of the respondent no.2 from the memorandum
of appeal.

This appeal is preferred against the
judgment and award dated 19th June, 2018 passed

by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Jalpaiguri in MAC Case No. 387 of 2014 granting compensation of Rs. 2,73,500/- together with interest @ 7.5% per annum from the date of filing of the DCF i.e. 18.05.2018 in favour of the claimants under Section 163A of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 5th November, 2015 at about 8 a.m. in the morning while the deceased was proceeding towards Mathabhanga by bus bearing registration No. WGV-2564. At that time one truck bearing registration No. WB-76/9493 dashed the said bus from opposite direction in a rash and negligent manner, as a result of which the deceased sustained severe injuries on his person. The deceased was taken to Mathabhanga SD. Hospital wherefrom he was referred to M.J.N. Hospital, Coochbehar where he expired. On account of sudden demise of the victim, the claimants being the widow, daughter and two sons filed application for compensation under Section 163A of the Motor Vehicles Act, 1988.

The insurance company contested the claim application. However, owner of the offending vehicle did not contest the claim application and the case was disposed of *ex parte* against him.

Since the owner of the offending vehicle did not contest the claim application, service of notice of appeal upon the said respondent is dispensed with.

In order to establish their case, the claimants have examined only one witness namely claimant no.3 and produced documents which have been marked as **Exhibits 1 to 15** respectively.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs. 2,73,500/- together with interest @ 7.5% per annum from the date of filing of the DCF i.e. 18.05.2018 in favour of the claimants under Section 163A of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award passed by the learned Tribunal, the claimants have preferred the present appeal.

Mr. Tamal Kumar Sen, learned advocate for the appellants-claimants submits that in view of the decision of the Hon'ble Supreme Court in ***Special Leave Petition (Civil No.6260 of 2019) New India Assurance Co. Limited versus Urmila Halder***, the compensation should be enhanced to Rs.5,00,000/-.

Mr. Gobinda Saha, learned advocate for the respondents- Insurance Company also submits that

in view of the Gazette Notification dated 22nd May, 2018, the compensation amount in respect of the application under Section 163A of the Motor Vehicles Act, should be Rs.5,00,000/-.

Bearing in mind the aforesaid and the proposition laid down by the Hon'ble Supreme Court in *Urmila Halder(supra)* the compensation amount is enhanced to Rs.5,00,000/-. The aforesaid amount of compensation shall carry interest @ 6% per annum from the date of filing of the claim application till payment.

It is informed that the appellants-claimants have already received Rs. 2,73,500/- together with interest @ 7.5% per annum from the date of filing of the deficit Court fees, i.e. 18.05.2018 in terms of order of the learned Tribunal. Accordingly, the appellants-claimants are entitled to receive balance amount of compensation. It is made clear that the amount together with interest already received by the appellants-claimants shall be adjusted against the enhanced amount and the interest thereon.

The respondents-insurance company is directed to deposit the balance amount of compensation before the learned Registrar, High Court, Circuit Bench at Jalpaiguri, within a period of six weeks from date.

Upon deposit of the balance amount, learned Registrar shall disburse the balance amount in equal share in favour of the appellants-claimants on satisfaction of their identity and payment of deficit court fees, if any.

Appellants-claimants are directed to deposit deficit court fees, if any.

With the aforesaid observations, the appeal stands disposed of. The impugned judgement and award is modified to the above extent. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(**Bivas Pattanayak, J.**)