IN THE HIGH COURT AT CALCUTTA

CIRCUIT BENCH AT JALPAIGURI

(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

FMA 13 of 2024

Majida Bewa & Ors.
Vs.
Iffco-Tokio General Insurance Co. Limited & Anr.

For the Appellants	:	Mr. Gobinda Saha Mr. Tamal Kr. Sen Ms. Priyanka Dey Mr. Milan Ch. Laskar
For the Insurance Co. Ltd.	:	Mr. Hirak Barman Mr. Chandan Roy
Heard on	:	20.08.2024
Judgment on	:	23.08.2024

<u>Ajoy Kumar Mukherjee, J.</u>

1. This appeal is at the instance of the claimants against the judgment and award dated 20th January, 2024 passed by Motor Accident Claim Tribunal 1st Court Jalpaiguri in MAC Case no. 361 of 2017.

2. The claimants/petitioners made a claim application under section 163 A of the Motor Vehicles Act, 1988(in short MV act), in connection with death of Md. Ali Miya @ Md. Miya who died on 05.09.2017 due to Road Traffic

Accident. It is stated that on 05.09.2017 at about 8.30. p.m. while the deceased was proceeding towards Jatamari from Mathabhanga by driving an auto rickshaw, he met an accident and sustained injury and thereafter succumbed to his injuries on 07.09.2017. The said accident was registered on the basis of complaint at mathabanga police station being Mathabhang P.S. Case no. 422 of 2017 dated 15.09.2017. Before the tribunal below the petitioners, who are legal representatives of the deceased, prayed fixed compensation of Rs. 6,90,000/- from the date of filing of the application, contending that the deceased used to earn Rs. 5,000/- per month and he was aged about 35 years at the time of his death. After trial the Tribunal was pleased to grant an award of Rs. 4,82,700/- in total along with interest at the rate of 6% per annum from the date of filing of the application till recovery of the awarded amount.

3. Mr. Saha learned counsel appearing on behalf of the claimant submits that in view of amendment made in the year 2018 of the said Act of 1989 and also in view of notification issued by Government of India dated 22th May, 2018 being No. S.O. 2022(E), the claimants are entitled to get fixed amount of compensation of Rs. 5,00,000/-, which amount shall stand increased by 5% annually and complaints are also entitled to get 6% interest on the awarded amount from the date of filing of the application .

4. Per contra learned counsel appearing on behalf of the insurance co,. Limited submits that the learned Tribunal rightly took Rs. 3,300/- as the monthly income of the deceased as per the structural formula basis as enunciated under section 163A of the M.V. Act prevailing at the time of accident and assessed the compensation correctly. He further submits that the present claim of the claimants are exaggerated.

5. Mr. Barman, learned counsel for the petitioners further submits that section 163A (1) of the Act of 1988 is a substantive law and the second schedule provides for the extent of the compensation and thus, the soul of the substantive right created by sub-section (1) of section 163-A. He further submits, in the absence of any express words or necessary implication to the contrary, any change in the substantive law is prospective and the new schedule can apply only to accidents occurring on or after the same is brought in. There is no rule of construction that beneficial legislation is always retrospective in operation. He further submits that considering the enabling provision of amendment by way of subordinate law by publishing notification the Central government cannot make any change in substantive right of the claimant to receive the compensation amount and corresponding substantive obligation of the owner/insurer retrospectively and as such it ought to be read to give effect to the same only on an from 22nd May 2018. He further submits that the amendment of the second schedule is effected by the Central Government by way of issuing of notification i.e. by a subordinate/delegated law and as such the same cannot have retrospective operation until the statue itself expressly confers such right to the delegatee and the same has not been conferred as per section 212 of the Act of 1998 and in this context he placed reliance on the Apex Court decision in ***Panchi Devi Vs. State of Rajasthan*** reported in **(2009) 2 SCC 589 (para-9).** In view of above the opposite party prayed for dismissal of the appeal.

6. Admittedly in the present context the accident took place on 05.09.2017 and whereas the central Government notification in connection with the second schedule in respect of section 163A came into force on 22nd May, 2018.

7. In such view of the matter the short point for consideration before this Court is whether the said notification in respect of second schedule relating section 163 of M.V. Act 1988 which came into effect by gazette notification on 22.05.2018 would have retrospective effect in connection with an accident which took place on 05.09.2017.

8. The same question was raised before a division Bench of this Court in **Urmila Halder Vs. New India Assurance Co. Ltd. and others.** reported in **[(2019) 2 TAC 143 (CAL)].** In para 118 of the said judgment the division came to a conclusion

> *"118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post 22nd May, 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 himself regardless of whether the new schedule is beneficial to them or not. The issue framed in paragraph 12 is, accordingly, answered."*

9. Thereafter, the New India Assurance Co. ltd. Preferred a special Leave petition before the Apex Court against the aforesaid judgment passed by the Division Bench of the High Court dated 9th August, 2018. The Apex Court vide its judgment passed in SLP (Civil) No. 6260 of 2019 dated 8th February, 2024 was pleased to dismiss the said SLP with specific observation 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.

10. In view of such circumstances it is no more *res integra* in view of **Urmila Halder Judgment (supra)** that while deciding claim application under section 163A of the Act 1988, the ordinary rule of litigation that the rights of the parties stand crystallized on the date of commencement of litigation and the right to relief is to be decided by reference to the date on which the claimant filed the application will not apply and as such in the pending applications under section 163A, the date of accident becomes irrelevant in respect of a claim application under section 163A.

11. In such view of the matter the compensation amount is to be re assessed in terms of the notification dated 22nd May, 2018 as follows:

(As per notification actual compensation under section 163 A is Rs. 5,000,000/- and the said amount shall stand increased by 5% annually. Accordingly the compensation amount comes down to Rs. 5,00,000/- + increased amount of 5% for 7 years which comes down to Rs. 5,00,000/- + Rs.1,75,000/- which is equal to Rs. 6,75,000/-. Tribunal already awarded Rs.4,82,700/-

12. Accordingly the insurance company/Respondent is directed to pay to the claimants an amount of Rs. 1,92,300/-along with simple interest at the rate of 6% per annum on the said amount from the date of filing of the claim application till the date of payment, within a period of 60 days from the date of the communication of the order, in the mode and manner as indicated in the judgment impugned, failing which the claimants will be entitle to execute the award in accordance with law.

13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)