

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI
APPELLATE SIDE**

05.04.2024
SL No.42
Court No. 3
Ali

FMAT 40 of 2019

Mania Devi (Mahato) & Ors.

Vs.

The New India Assurance Co. Ltd. & Anr.`

Mr. Subir Banerjee, Adv.,
Mr. Abhijit Raha, Adv.,
..... for the appellants/claimants.

Mr. Abhijit Roy Chauduhri, Adv.,
...for the respondent/Insurance Co..

The instant appeal has been preferred against the Judgment and Award dated 27th day of March, 2018, passed by the learned Judge, Motor Accident Claims Tribunal, Jalpaiguri, in MAC Case no. 164 of 2014.

The brief facts of the case is that the present appellants being the claimants have preferred an application under Section 163-A of the M.V. Act, before the learned tribunal for getting compensation on the ground that their predecessor died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company.

The claim case was contested by the insurance company by filing written statement.

Considering the submission of the parties and after receiving the evidences the learned

tribunal has awarded a sum of Rs.4,15,000/- and directed the Insurance Company to pay the compensation.

Being aggrieved by and dissatisfied with the said award, the claimants have preferred the instant appeal for enhancement of the award.

Learned advocate appearing on behalf of the claimants submits that the law of the land has been changed by virtue of the decision of Hon'ble Apex Court passed in ***Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.*** He further argued that, it has been decided by the Hon'ble Apex Court in the case of ***Urmila Halder (supra)*** that fix compensation in a fatal accident case where death has been caused would be Rs.5,00,000/-. The same view may be applicable in this case; so the necessary order may be passed.

Learned advocate appearing on behalf of the Insurance Company submits that the instant appeal was initiated against the award passed by the learned tribunal. The Insurance Company has already complied the order. Thus, after receiving the award, the claimants are precluded to prefer the instant appeal.

Heard the learned advocate perused the observation of the Hon'ble Apex Court. The Hon'ble Apex Court passed in ***Urmila Halder Vs. New***

India Assurance Co. Ltd. & Ors., has affirmed the Division Bench of this Hon'ble High Court. The Hon'ble Division Bench in its judgment dated 9th August 2018 has awarded a compensation to the tune of Rs. 5,00,000/-. It has been specifically dealt with by the Division Bench of this Court that the Gazette Notification dated 22nd May, 2018 passed in connection with Section 163-A of M.V. Act is to be applicable in all pending cases prior to the notification. The view of the Division Bench was challenged before the Hon'ble Apex Court. The Hon'ble Apex Court has decided the issue on February 8, 2024 and affirmed the order passed by the Hon'ble Division Bench of this Court.

The Hon'ble Apex Court has further guided that the award in a case where the death has been caused has to be fixed to be Rs.5,00,000/- and it must have carried some interest. By virtue of the decision of Hon'ble Apex Court in Hon'ble Apex Court passed in **Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.**, it appears to me that the award passed by the learned tribunal requires modification

In this case the Insurance Company has already complied the award of Rs. 4,15,000/-. Thus, the balance award come to Rs. 85,000/-.

The Insurance Company is directed to pay the compensation of Rs. 85,000/- together with 6% interest per annum from the date of filing of the claim application till its actual payment and also further directed to pay the interest portion of 6% per annum from the date of filing of the claim application to the date of payment of amount of Rs. 4,15,000/-. The Insurance Company is further directed to comply with this order within six weeks from the date of this order through the office of the learned tribunal according to the direction of the learned tribunal subject to the 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 40 of 2019** is disposed of.

All connected pending 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.)

