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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

FMA 15 of 2024

Smt. Sabita Roy
Vs.
The New India Assurance Company Ltd. & anr.

For the Appellant	:	Mr. Gobinda Saha Mr. Tamal Kumar Sen Mr. Milan Chandra Laskar
For the Respondent/Insurance Co.	:	Mr. Rishin Chakraborty
Heard on	:	21.08.2024
Judgment on	:	23.08.2024

Ajoy Kumar Mukherjee, J.

1. Being aggrieved by and dissatisfied with the judgment and award dated 21st day of June, 2016 passed MAC Tribunal 1st Court Jalpaiguri in MAC Case No. 107 of 2013, present appeal has been preferred seeking enhancement of the compensation amount.

2. In the present context the claimants/appellants herein had filed a claim application under section 163A of the Motor Vehicle Act 1988 (in short MV Act) claiming compensation. In the claim application it has been stated that the minor daughter of the claimants while returning home after completing her Madhyamik Examination, a truck bearing No. UP 61/K/5474 which was coming at high speed from opposite direction mowed down the said girl, which resulted instantaneous death. The incident occurred on 02.03.2013 and on the same day on the basis of an FIR, Mathabhanga P.S. case no. 73/2013 on 02.03.2013 was initiated. The claimants filed application for compensation to the tune of Rs.4,13,000/- along with interest @ 9% from the date of filing of application till payment is made to the petitioner under section 163 A of the M.V. Act.

3. Learned Tribunal below framed four issues and ultimately came to a finding that the victim was aged about 16 Years at the time of death and since she was student, the notional income was taken as Rs. 15,000/- per annum. After deducting 1/3rd for her personal expenses and after adding funeral expenses and loss of estate, the tribunal below awarded an amount of Rs. 1,64, 500/- towards compensation.

4. Being aggrieved by the said amount of compensation Mr. Saha learned counsel appearing on behalf of the appellant/claimants submits that the amendment section of second schedule in relation to the section 163A of the M.V. Act dated May 22, 2018, the compensation payable to the legal heirs in such cases under section 163A would be Rs. 5,00,000/-, together with interest in all pending claim cases before the Tribunal as notified by the Central Government. Accordingly the Tribunal below ought to have computed the compensation amount following the notification dated 22.05.2018 in connection with section 163 A of the M.V. Act.

5. Mr. Chakraborty learned counsel appearing on behalf of the Respondent/ Insurance Company Ltd. submits that the learned Tribunal rightly took 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.

6. Mr. Chakraborty, learned counsel for the petitioners further submits that section 163A(1) of the 1988 Act 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 Govt. 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 1988 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.

7. Admittedly in the present context the accident took place on 02.03.2013 whereas the central Government notification in connection with the second schedule in respect of section 163A came into force on 22nd May, 2018.

8. 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 to erstwhile section 163A of M.V. Act 1988 which came into effect by way of Gazette notification on 22.05.2018, would have retrospective effect in connection with an accident which took place on 05.09.2017.

9. 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 Bench 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.*

10. 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.

11. 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.

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

As per notification actual compensation under section 163A is Rs. 5,00,000/- 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 11 year 6 months which comes down to Rs. 5,00,000/-+ 2,87,500/-=7,87,500/-. Tribunal awarded an amount of Rs. 1,64,500/-

13. Accordingly the insurance company is directed to pay to the claimants an amount of Rs. 6,23,000/- along with simple interest at the rate of 6% per annum on the said amount from the date of filing the claim application till 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 entitled to execute the award in accordance with law.

14. 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.)