



2024:DHC:10148



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 13th December, 2024***

+ **MAC.APP. 274/2022, CM APPL. 38964/2022**

NEW INDIA ASSURANCE CO LTD

Delhi Legal Hub,
Core-3, First Floor, Scope Minar,
Laxmi Nagar District Centre,
Delhi.

.....Appellant

Through: Mr. Ravi Sabharwal, Advocate3

versus

1. **SUNIL**
S/o Late Sh. Roshan
R/o H.No.33, Vikas Nagar, Loni Dehat,
Ghaziabad (U.P.)
2. **YUSUF**
S/o Sh. Riyasat
C/o Sh. Vikas Goel,
3rd, H.-72, Rakesh Marg, Nehru Nagar,
Ghaziabad (U.P.)
3. **VIKAS GOEL**
S/o Sh. Dinesh Chand Goel
3rd, H-72, Rakesh Marg, Nehru Nagar,
Ghaziabad, (U.P.)

.....Respondents

Through: Mr. Anshuman Bal and Ms. Divya
Saini, Advocates for R-1.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



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J U D G M E N T (Oral)

1. *An Appeal under Section 173 of the Motor Vehicle Act, 1988* has been filed on behalf of the Insurance Company to challenge the Award dated 26.05.2022 *vide* which the lumpsum compensation in the sum of Rs.5,00,000/- along with interest @ 8% per annum *under Section 163-A of the Motor Vehicle Act, 1988* (as amended) has been granted on account of demise of Deepak, aged 25 years, in a road accident on 06.08.2017.
2. **Learned counsel on behalf of the Insurance Company** has challenged the impugned Award on the *sole ground* that though initially the Claim Petition was filed under Section 166 of the Motor Vehicle Act, 1988 but the learned Tribunal granted a lumpsum compensation of Rs.5,00,000/- along with interest @ 8% per annum under the amended provision of Section 163-A Motor Vehicle Act, 1988. It is submitted that the accident took place on 06.08.2017 while the *Notification under Section 163-A came into effect from 22.05.2018*, which could not have been applied retrospectively. Therefore, the Tribunal fell in error in granting the compensation of Rs. 5,00,000/- for an accident which had happened before the date of Notification.
3. **Learned counsel on behalf of the Claimant** has argued that the compensation has been assessed in accordance with Law. The grant of Compensation under Motor Vehicle Act is beneficial legislation and the benefit of the subsequent amendment should not be denied to the Claimants in regard to the accident which had happened prior to the Notification, for which reliance is placed on Minara Bibi and Ors. Vs. National Insurance Co. Ltd. and Ors., of Calcutta High Court.



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4. **Submissions heard and record perused.**

5. *Briefly stated*, on 06.08.2017 at about 11:00 p.m., at Chirori Road, Bantla Chowki Bhatta, Loni, Ghaziabad, U.P., Late Sh. Deepak died due to a motor vehicular accident involving a truck, bearing *registration No. UP17T-4689*, being driven by Yusuf/Respondent No. 2, owned by Sh. Vikas Goel/Respondent No. 3 and insured with the Appellant Insurance Company.

6. The FIR No. 764/2017 u/s. 279/304-A IPC 1860, was registered at P.S. Loni, at the instance of the brother of the deceased. It is stated therein that the deceased, who was doing the work of loading -unloading the bricks on the offending truck, fell from it due to rash and negligent and fast speed driving of the truck by the driver/Yusuf. He was taken to GTB hospital by the Driver himself, where he was declared “*Brought Dead*”.

7. The Petition was filed u/s. 166 and 140 of the Motor Vehicle Act, 1988; though was subsequently converted to S. 163-A Petition. The Learned Tribunal, while relying upon *the Notification dated 22.05.2018, issued by the Ministry of Road Transport and Highways* awarded a compensation of Rs. 5,00,000/- along with interest @8% vide the impugned Award.

8. The core question raised by the Insurance Company is: *whether the amended provisions of Section 163-A Motor Vehicle Act, can be applied retrospectively to an accident that occurred prior to the date of Notification, which came into effect on 22.05.2018.*

9. The relevant portion of *the Notification S.O. 2022(E). dated 22.05.2018*, issued by the Ministry of Road Transport and Highways, is reproduced as under: -



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**“ MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
NOTIFICATION**

New Delhi, the 22nd May, 2018

S.O. 2022(E).—*In exercise of the powers conferred by sub-section (3) of section 163A of the Motor Vehicles Act, 1988 (59 of 1988), the Central Government, keeping in view the cost of living, hereby makes the following*

amendment to the Second Schedule to the said Act, namely:—

In the Motor Vehicles Act, 1988, for the Second Schedule, the following Schedule shall be substituted namely:—

“THE SECOND SCHEDULE

(See Section 163A)

**SCHEDULE FOR COMPENSATION FOR THIRD PARTY
FATAL ACCIDENTS/INJURY CASES CLAIMS**

1. (a) Fatal Accidents:

Compensation payable in case of Death shall be five lakh rupees.

(b) Accidents resulting in permanent disability:

Compensation payable shall be = [Rs. 5,00,000/- × percentage disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923)] :

Provided that the minimum compensation in case of permanent disability of any kind shall not be less than fifty thousand rupees.

(c) Accidents resulting in minor injury:

A fixed compensation of twenty-five thousand rupees shall be payable:

2. *On and from the date of 1st day of January, 2019 the amount of compensation specified in the clauses (a) to (c) of paragraph (1) shall stand increased by 5 per cent annually.*

3. *This notification shall come into form on the date of its publication in the Official Gazette.”*

[F. No. RT-11021/65/2017-MVL]

ABHAY DAMLE, Jt. Secy. “

10. A perusal of the above Notification shows that though Section 163-A Motor Vehicle Act, 1988 provided for payment of compensation on



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structured formula basis as indicated in the Second Schedule, however, the same was amended by the Notification dated 22.05.2018 which introduced an enhanced compensation scheme for claimants in cases of motor accident fatalities. Evidently, as per the new schedule, Rs.5,00,000.00 is payable under sub-section (1) of Section 163-A of the 1988 Act for a claim arising out of death in a road accident.

11. Pertinently, there is neither any specific bar entailed in the amendment which denies the benefit of the legislation to the Claimants/victims of accidents which have occurred prior to the Notification nor is there any express bar on its applicability to the claims arising out of accidents that have occurred before the date of the Notification and are pending adjudication.

12. Evidently, the legislative intent behind this amendment is clearly remedial and aimed at providing more adequate relief to victims and their families in cases of 'no fault liability' and in 'hit and run' motor accidents. Section 163-A was introduced in the year 1994 and the Courts have consistently adopted a liberal interpretation to ensure that the objectives of beneficial legislation are provided to all.

13. The Calcutta High Court, in the judgment of Urmila Halder Vs. New India Assurance Co. Ltd. & Ors., in F.M.A. 446 of 2010, decided on 09.08.2018, while considering the amount of compensation to be granted on account of the death of the 22 year old daughter of the deceased, in a road accident dated 11.12.2004, opined that the enhanced compensation amounts introduced under the amended Section 163-A are applicable to all cases pending before the Courts or Tribunals, irrespective of the date of the accident. Thus, the parents of 22-year-old deceased were held entitled to an



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amount of Rs. 5,00,000/- on the basis of the Amended Section. It was further observed that: -

*“ 105. First, having regard to the said notification, it is clear as crystal that the Central Government, in its wisdom, has done away with the structured formula contemplated by the old schedule and replaced it with a new schedule in terms whereof lump-sum amount of Rs. 5,00,000.00, as noticed above, is to be paid as compensation to the legal heirs of a deceased victim. **Importantly, though the said notification has come into force on and from May 22, 2018, it does not expressly or by necessary intendment make it inapplicable to claim applications/appeals which are pending before the judicial for a as on that date.** Further still, sub-section (1) of Section 163-A of the Act makes no reference to the date of the accident as relevant for determining compensation that is payable. **This, in our view, is of paramount importance.** Death or physical disablement caused by an accident involving the use of a motor vehicle being the sine qua non for award of compensation under Section 163-A of the 1988 Act and upon the same being proved before the tribunal, the statute ordains that the owner of the offending motor vehicle or the authorized insurer shall be liable to pay ... compensation, as indicated in the Second Schedule (underlining for emphasis by us). It is not that by the amendment, a new or additional obligation is being imposed on the owner/authorized insurer of the offending vehicle. What the said notification has brought about is a change in the methodology for determining compensation, without affecting the obligation. The obligation, i.e., the words underlined above, would mean whatever sum for which there is an existing obligation to pay in praesenti or in other words, what is presently payable. Sub- section (1) of Section 163-A read with sub-section (3) thereof sufficiently puts the owner/authorized insurer on guard that whatever compensation is payable according to the Second Schedule has to be paid. It is not that the Second Schedule as on date the accident occurs is*



decisive. In our view, the words underlined above are wide enough to cover all cases in future, post May 21, 2018 (a day prior to issuance of the amending notification), where awards are made by the tribunals notwithstanding what the contents of the old schedule were and notwithstanding that when the claim applications had been filed, the Second Schedule was different in its contents than what it is on the date of the award. Whatever is there in the Second Schedule on the date the award is to be pronounced being the legislative mandate, has to be followed by the tribunal in determining compensation. The law does not cast a duty on the tribunal to look into the contents of the Second Schedule which has ceased to exist by reason of substitution vide the said notification while dealing with claim applications that were filed when the old schedule was in force. The same position would prevail when the high court considers an appeal where the quantum of compensation determined by the tribunal is challenged by the claimant(s) as insufficient and not in accordance with the structured formula available in the old schedule. An appeal being a continuation of the original proceedings, we are inclined to the view that while deciding a claim for compensation under the said section, it is also for the high court to look into the Second Schedule as it stands on the date the appeal comes up for final decision and to award compensation in line with it subject of course to a preceding finding based on the evidence on record that the death of the victim had occurred due to an accident involving the use of a motor vehicle. However, the beneficial effects of the said notification cannot be taken advantage of by claimants who have accepted an award based on the structured formula in the old schedule and have not carried the award in an appeal, thereby giving it finality, or in appeals where the challenge is confined only to omission of the tribunal to award interest on the sum determined as payable on account of compensation.”

14. This view was upheld by the Supreme Court in the Appeal preferred



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in this case titled New India Assurance Co. Ltd. vs. Urmila Halder, SLP No. 6260 of 2019, decided vide Order 08.02.2024, wherein it was observed 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 and thus, the Calcutta High Court has rightly enhanced the award amount to Rs. 5,00,000/- (Rupees Five Lakhs).

15. Relying on the above decisions, similar view was taken by the Calcutta High Court in Minara Bibi & Ors. (Supra), that denying the benefit of enhanced compensation to claimants on account of the accident predating the Notification would defeat the legislative purpose and thus, the benefit of the provisions of the amended Section 163-A should be extended to all cases pending adjudication as on the date of the Notification.

16. In the present case, the accident occurred on 06.08.2017, and the Claim petition under Section 166 of the Motor Vehicles Act, 1988 was pending adjudication before the Ld. Tribunal, when the Amended Notification dated 22.05.2018 was notified. Consequently, the Tribunal granted compensation under the amended Schedule of Section 163-A MV Act which is consistent with the principle laid down in the aforementioned judgments, recognizing the overarching intent of the legislature to provide just and fair compensation to victims and their families.

17. Therefore, the impugned Award dated 26.05.2022 passed by the Ld. Tribunal, is upheld as it warrants no interference.

18. There is no merit in the Appeal which is hereby dismissed along with the pending Application(s), if any.

19. The Insurance Company is directed to deposit the balance compensation amount, if any, along with accrued interest, within a period of



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four weeks, to be disbursed in terms of the Award.

20. The statutory amount deposited be returned to the Appellant, in accordance with law.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 13, 2024
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