IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble **Justice Prasenjit Biswas**

FMA 440 of 2009

Smt. Nunnahar Bewa & Ors.
Vs.
United India Insurance Co. Ltd. & Anr.

For the appellant	:	**Mr. Krishanu Banik** **Mr. Tathagata Banik**
For the respondents	:	**Mr. P. K. Pahari**
Delivered on	:	**30.01.2025**

<u>Prasenjit Biswas, J.</u>

1. The instant appeal is preferred challenging the impugned judgement and award dated 30th July, 2008 passed by the Learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track 2nd Court, Malda in connection with MAC Case No. 190 of 2008.
2. Being aggrieved by and dissatisfied with the said judgement and award, the present appeal is preferred at the behest of the appellant/claimant.
3. It is submitted by the learned counsels of both the parties that the instant appeal can be disposed of in view of the judgement rendered by the Hon'ble Apex Court in case of The New India Assurance

Company Limited Vs. Urmila Halder in connection with Special Leave Petition (Civil) No. 6260 of 2019.

4. The accident took place on 11.11.2005 when the deceased was coming to his house by a cycle. The motor cycle being No. WB-66C/9182 dashed the deceased from back side and as a result, the victim sustained serious injuries and he was taken to Ratua Hospital and thereafter he was referred to Malda Sadar Hospital where he succumbed to injuries. Over the incident police case was started being Ratua Police Case No. 248 of 2005 dated 12.11.2005 against the owner/driver of the offending motor cycle.
5. Over the said road traffic accident, the claimants being the heirs/ legal representatives of the victim filed an application before the Tribunal with a prayer for getting compensation under Section 163A of the Motor Vehicles Act which falls under "no fault liability" and the claimants have to prove the involvement of the offending motor cycle and the said accident in which the victim sustained injuries and subsequently expired.
6. Despite service effected upon the owner of the offending vehicle, he did not venture to appear and contest the case before the Tribunal as well as before this Court.
7. The only point for consideration before this Court is whether amendment in Section 163A of the Motor Vehicles Act, 1988 which came into effect by a Gazettee Notification on 22nd May, 2018 would relate to an accident which had occurred prior to the said date.
8. Learned advocate appearing on behalf of the appellants/claimants submitted that the present appeal is filed with a prayer for enhancement of the compensation awarded to the claimant by the

Tribunal in view of the amendment made by a Gazette Notification on 22nd May, 2018 in the Motor Vehicles Act. The said amendment of the Act entails that when a person died due to motor traffic accident, he has to get Rs. 5 lakh as lump sum amount of compensation.

9. It is profitable to quote the observation of the Hon'ble Division Bench of this Court in the case of ***Urmila Halder vs. New India Assurance Co. Ltd. & ors.*** decided on 9th August, 2018, wherein this Court held as under:

> *"Sub-section (1) of Section 163-A of the 1988 Act ordains that notwithstanding anything contained therein or in any other law for the time being in force, upon proof of death in an accident involving the use of a motor vehicle, compensation is payable either by the owner of such vehicle or the authorized insurer thereof as indicated in the Second Schedule to the legal heirs of the victim. The Second Schedule appended to the 1988 Act, referring to Section 163-A thereof, provides the structured formula for determining compensation."*

10. The order of the Division Bench of this Court was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court in Special Leave Petition (Civil) No. 6260 of 2019 confirmed the decision as made by the Division Bench of this Court and held at paragraph 10 interalia that-

> *"10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessaily entail the benefit to be passed on to the claimant in the absence of any specific bar to the same. In the present case, the liability of the appellant-Insurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and*

accordingly, the claim has been enhanced to Rs.5,00,000/-(Rupees Five Lakhs). As 50 % of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks."

11. Therefore, the inevitable conclusion is that while deciding the claim petition passed on May 22, 2018, the new Schedule ought to be applied for determining the compensation payable to the claimants. The learned Tribunal in its impugned judgement awarded compensation to the tune of Rs.1,85,500/- in favour of the claimants with a direction that the said awarded compensation should be paid by the owner of the offending motor cycle. It is held by the learned Tribunal in its impugned judgement that the O. P. no.1 had driven the motor cycle without any valid driving licence and the policy of the vehicle stipulated that the Insurance Company would not be liable for any accident by the driving of any vehicle of any other person other than the person prescribed in the policy or any unauthorized person without having any valid driving licence. The said policy certificate has been marked in the case as Ext.A filed by the O. P. /Insurance Company.

12. There is no dispute about the involvement of the vehicle and the death of the victim, which was caused due to the accident. The accident was caused by the offending vehicle and the death of the victim was proved in the case and it was not disputed by the Respondent/Insurance Company. The only contention that was raised by the Insurance Company that as per insurance policy of the offending vehicle the owner of the vehicle should be liable to pay the condensation.

13. Learned counsel appearing on behalf of the appellants/claimants at this juncture cited a decision reported in **2004 (3) SCC 297 (National Insurance Company Limited Vs. Swaran Singh & Ors.)**. The attention of this Court is drawn to the relevant paragraph of the said reported judgement. In the said case is held by the Hon'ble Apex Court, inter alia, "that it is, therefore, evident from the discussion made hereinbefore that the liability of the Insurance Company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been upholding the field for a limited time." In that reported judgement the Hon'ble Apex Court further held, inter alia, that wherein the persons having the vehicles at the time when the accident took place did not hold any licence at all, then in the facts and circumstances of the case the said award may also be satisfied by the petitioner/Insurance Company, subject to their right to recover the same from the owners of the vehicles in the manner as laid down in the said judgement.

14. In the above referred case, the Hon'ble Supreme Court has explained the doctrine of "pay and recovery" and its application. It has held that the liability of the Insurance Company in cases of breach of policy condition, due to disqualification of the driver or invalid driving licence of the driver in respect of the third-party risks, the insurer has to indemnify the compensation amount to the third party and later recover the same from the insured. At paragraph 110 of the said judgment, the Apex Court has summarized the principle as below:

> *(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the*

relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

15. It is submitted by the learned advocate appearing on behalf of the appellants/claimants that the owner of the offending vehicle did not satisfy the award as directed by the Tribunal and as such the present

appellants/claimants are entitled to the fixed amount of Rs.5 lakh as stipulated in the Schedule II of the Motor Vehicles Act, 1988.

16. In view of the decision rendered by the Hon'ble Apex Court in **Swaran Singh (supra)**, the Insurance Company is directed to deposit the total awarded amount of Rs. 5 lakh along with simple interest @ 6 % p.a. from the date of filing of the claim application i.e. 12.06.2006 till final payment before the office of the learned Registrar General, High Court, Calcutta within a period of six weeks from this date subject to their right to recover the same from the owner of the vehicle. Upon deposit of the entire compensation amount together with accrued interest, as indicated above, by the Insurance Company, the same shall be released in favour of the appellants/claimants in equal share upon proper identification, subject to payment of ad valorem court fees on the total awarded compensation amount, if not already paid.

17. Thus, the appeal is hereby allowed and the impugned order dated 30th July, 2008 passed in connection with MAC Case No. 190 of 2008 by the Tribunal is hereby modified as stated above.

18. Consequently, the other application if any, filed in connection with this appeal is also disposed of.

19. Let a copy of this judgement along with Tribunal Court Record be sent down immediately to the Tribunal for information.

20. All the parties are to act on the server copy of this judgement duly downloaded from the official Website of this Hon'ble High Court.

21. Urgent photostat certified copy of this judgement be given to the parties upon compliance of all legal formalities.

(Prasenjit Biswas, J.)