# IN THE HIGH COURT AT CALCUTTA
## CIVIL APPELLATE JURISDICTION
## APPELLATE SIDE

**PRESENT: - THE HON'BLE JUSTICE PRASENJIT BISWAS**

**FMA 1315 of 2016**

**Smt. Philisita Kujur**
**versus**
**The Divisional Manager Oriental Insurance Co. Ltd. & Anr.**

**For the Appellant/Claimant : Mr. Saidur Rahaman, Adv.**

**For the Insurance Company : Mr. Parimal Kumar Pahari, Adv.**

**Delivered on : 27.02.2025 (dictated in open court)**

**Prasenjit Biswas, J.:-**

1. The instant appeal is filed challenging the impugned judgment and award dated 26.04.2012 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Dakshin Dinajpur at Balurghat in connection with MAC Case No. 01 of 2008.
2. By passing the impugned judgment and award, the learned Tribunal awarded compensation to the tune of Rs. 1,80,500/- in favour of the claimant/appellant.
3. Being aggrieved and dissatisfied with the said impugned judgment and award, the appellant/claimant has preferred this instant appeal.

4. It is submitted by the learned advocates appearing on behalf of both the parties that the instant appeal can be disposed of in view of the judgment of the Hon'ble Apex Court rendered in case of **New India Assurance Co. Ltd. Vs. Urmila Halder** in connection with **Special Leave Petition (Civil) No. 6260 of 2019.**
5. The instant claim petition was filed under Section 163A of the Motor Vehicles Act by the claimants being the parents of the deceased on account of death of his son in a road traffic accident. During pendency of the case before the Tribunal, the father of the deceased expired. Accordingly, his name was expunged from the claim petition.
6. On fateful day, the son of the claimant/appellant was coming towards his residence, Fulbari from the house of his relative situated at Daralhat along with left side of the road on riding a bi-cycle. The offending vehicle being No. W.B. 59/6717 which was proceeding towards Balurghat from Gangarampur at a very high speed and in negligent manner came on wrong side of the road at Mohanpur and dashed the bi-cycle. As a result the victim fell down on the ground and the offending vehicle ran over him and he sustained severe injuries on his person. He was immediately taken to Hospital wherein he succumbed to injuries.
7. The claimants filed an application under Section 163A of the Motor Vehicles Act praying for getting compensation for the accidental death of their son. The said case was contested by the Insurance Company by filing written statement. Evidences were adduced by the claimant before the Tribunal and after taking into consideration the evidences, both oral and documentary compensation amount to the tune of Rs. 1,80,500/- was awarded in favour of the claimant.

8. The instant case was filed under Section 163A of the Motor Vehicles Act, which falls under "no fault liability" and the claimant has to prove only the involvement of the offending vehicle and the accident in which the victim sustained injuries and subsequently succumbed to those injuries.
9. Although the notice of appeal was served upon the owner of the offending vehicle despite that he did not venture to appear and contest the present appeal.
10. 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 gazette notification on 22nd May, 2018 would relate to an accident which had occurred prior to the said date. Learned Advocate for the claimants submitted that the present appeal is filed with a prayer for enhancement of the compensation amount awarded to the claimants in view of the amendment made by a gazette notification on 22nd May, 2018 in the Motor Vehicles Act, 1988. The said amendment stipulates that when a person died due to motor traffic accident the claimant/ claimants is/are entitled to get Rs. 5 lakh as lump sum amount of compensation.
11. It is profitable to quote the observation of the Hon'ble Apex Court in case of **Urmila Halder** (**supra**) which interalia says 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 necessarily 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 ₹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".*

12. There is no dispute about the involvement of the vehicle and the death of the victim which was caused due to a road traffic accident. There is also no dispute about the validity of the insurance policy of the offending vehicle with the respondent/insurance Company on the date of accident. The accident caused by the offending vehicle and the death of victim are proved in this case and the respondent/insurance company has not disputed the same.

13. Therefore, the inevitable conclusion is that while deciding pending claim application post May 22, 2018 the new schedule ought to be applied by the Tribunals/Court for determining compensation payable to the heirs/ legal representatives of the victim. In the present appeal the claim was decided by the Tribunal on 26th April, 2012 prior to 22nd May, 2018 and compensation of a sum of Rs.1,80,500/- was granted in terms of the old schedule. So, the claimants are entitled to get fixed compensation of Rs.5 lakh on the account of death caused by the offending vehicle in terms of the guideline of the Apex Court as rendered in case of **Urmila Halder (supra)**

14. It is submitted by the learned advocate on behalf of the appellant that the compensation amount to the tune of Rs. 1,80,500/- along with accrued interest as awarded by the Tribunal has already been received by the appellant/claimant. So the appellant/claimant is entitled to balance amount of compensation to the tune of (Rs. 5,00,000/- minus Rs. 1,80,000/-) Rs. 3,20,000/- which shall carry simple interest @ Rs. 6% per

annum on that balance amount from the date of filing of the claim application till final payment.

15. The respondent No. 1/Insurance Company is directed to deposit the balance amount together with accrued interest as indicated above by way of cheque in the name of the claimant before the office of the learned Registrar General, High Court at Calcutta within a period of two months from this date, failing which the claimant is at liberty to execute the award in accordance with law. Upon deposit of the balance compensation amount together with accrued interest as indicated above by the Insurance Company, the same shall be released in favour of the appellant/claimant upon proper identification and subject to verification of the payment of ad-valorem court fees on the balance compensation amount, if not already paid.
16. With the above observations, the instant appeal being No. FMA 1315 of 2016 is, thus, hereby allowed after modifying the impugned judgment and award to the extent as aforesaid.
17. Consequently, connected application, if any, is also disposed of.
18. Let a copy of the judgment along with the Tribunal Court Record be sent back to the learned Tribunal forthwith for information.
19. All parties shall act on a server copy of the judgment and order uploaded from the official website of this High Court at Calcutta.
20. Urgent Photostat certified copy of the impugned judgment be given to the parties upon compliance of all legal formalities.

**(Prasenjit Biswas, J.)**