

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1100 of 2024

CAN 2 of 2024

Sohagi Ghosh & Anr.

Vs.

The New India Assurance Co. Ltd. & Ors.

For the Appellants : Mr. Muktakesh Das
Ms. Sonali Bag

For the Respondents : Ms. Sayanti Santra

Heard & Judgment on : 07.05.2025

Ananya Bandyopadhyay, J.:-

1. The instant appeal was heard earlier and judgment was reserved. However, the matter was listed under the heading 'For Hearing' for further clarification.
2. Both the Learned Advocates representing the appellants/claimants and the respondents/Insurance Company are present.
3. The instant appeal had been filed against the judgment and award dated 18.07.2016 passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track, 4th Court, Krishnagar, Nadia in M.A.C. Case No. 320 of 2011.

4. The claimants, namely Smt. Sohagi Ghosh (wife of Shyamal Ghosh) and Shyamal Ghosh (son of Late Purna Ghosh), both residents of Village Sahebnagar, P.S. Tehatta, District Nadia, filed an application under Section 163A of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal, Fast Track Court-IV, Krishnanagar, Nadia, being MAC Case No. 320 of 2011, seeking compensation of Rs. 3,00,000/- (Rupees Three Lakhs only) on account of the accidental death of Mayna Ghosh in a motor vehicle accident that occurred on 31.01.2011 at about 01:00 P.M.
5. The case of the claimants precisely stated on the date and time, as aforesaid, the offending vehicle, a tractor bearing Registration No. WB-51A/0580, was being driven at a high speed rashly and negligently and suddenly dashed Mayna Ghosh, the victim a passerby, near Sahebnagar Bus Stand. As a result, the victim sustained grievous injuries. She was first taken to the District Hospital, Krishnanagar, and thereafter admitted at Iqbalpur Nursing Home, Kolkata. Despite medical intervention, she succumbed to her injuries. Postmortem was conducted thereafter.
6. The owner of the offending vehicle did not contest the case and the case proceeded ex parte against him.
7. New India Assurance Company contested the aforesaid MAC case.
8. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidence dismissed the claim.
9. The Learned Advocate representing the Appellants/claimants submitted an application under section 163 of the Motor Vehicle Act was filed by the

Appellants/claimants for claiming compensation. The Learned Tribunal did not consider the said MAC Case under in law M.V. Act, Under section 163A.

10. Under section 163A of the Motor Vehicles Act stated in an accident effecting injury or death of the victim, compensation should be awarded in favour of the claimants of the deceased.

11. The victim daughter of the appellant died at the age of 22 years. She was a student but Learned Tribunal concerned, since the income and age of the student could not be proved by the claimant the compensation could not possible determined. Accordingly, the claim case failed.

12. Heard the submission of the learned advocates representing the respective parties.

13. Considering the intent and purport of the provision enumerated in Section 163A of the Motor Vehicles Act, disregarding the failure of evidence to have been adduced concerning the age of the victim and the income earned by the same the claimants are entitled to compensation.

14. In view of the judgment of the Hon'ble High Court in ***Urmila Halder v. The New India Assurance Company Ltd.*** and the same being affirmed by the Supreme Court on 08.02.2024 and the notification dated 22nd May, 2018, the appellants/claimants are entitled to Rs.5,00,000/- of just compensation with regard to second schedule 1(a) and notification dated 22nd May, 2018 and also the aforesaid observations of the High Court at Calcutta and the Hon'ble Supreme Court.

15. Schedule 1(a) of the Second Schedule of the notification no. S.O. 2022(E) dated 22nd May, 2018, published by the Ministry of Road Transport and Highways is as follows: -

"Fatal Accidents:

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

16. The Learned Advocate for the appellant /insurance company is to pay a sum of 5,00,000/- along with an interest at the rate of 6% per annum from the date of filing of the application under Section 163A of the Motor Vehicles Act till the date of realization by the appellant/insurance company at the office of the Learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order as well as deposit a balance sum of Rs.5,00,000/-, along with interest at the rate of 6 per cent per annum from the date of filing the claim application, if not deposited, before the office of the Learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.

17. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants in equal proportion as mentioned in the award granted by the learned the Court of the Additional District Judge, Fast Track, 4th Court, Krishnagar, Nadia on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Courts fees.

18. The appellant/insurance company is to pay the compensation amount to the respondent claimants and recover the said amount from the owner of the offending vehicle.

19. The instant appeal being FMA/1100/2024 along with CAN/2/2024 is disposed of.

20. Trial Court records shall be sent down to the concerned Tribunal forthwith.

21. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)

Srimanta, A.R.(Ct.)