

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 751 of 2006

Sk. Asaruddin & Anr.

-Vs-

Sri Santanu Ghosh & Ors.

For the Appellants/claimants : Mr. Amit Ranjan Roy

For the Respondents/
Insurance Company : Mr. Shaibalendu Bhowmick

Heard on and Judgment on : 09.09.2025

Ananya Bandyopadhyay, J.:-

1. Both the Learned Advocates representing the appellants/claimants Company and the respondents/Insurance Company are present in Court.
2. The instant appeal had been filed against the judgment and award dated 27.01.2006 passed by the Learned Judge, Motor Accident Claims Tribunal, Purba Medinipore at Tamluk in M.A.C. Case No. 61 of 2025/55 of 2025.
3. The Learned Advocate representing the appellant submitted that the instant appeal had been filed against the Judgment and award dated 27.01.2006 passed by the Judge Motor Accident Tribunal, Purba Medinipore at Tamluk in MAC Case No. 61/2005 by 55/2005 deciding an application under Section 163A of the Motor Vehicles Act, 1988. It was further submitted disregarding the claimed income of the victim to be

Rs.4,500/- per month the Tribunal has assessed the compensation to the extent of Rs.2,09,000/- against the claimed amount of Rs.5,00,000/-. The Learned Advocate representing the appellant referred to the decision cited in Ram Murti & Ors. –Vs.- Punjab State Electricity Board (Civil Appeal No. 7143 of 2022).

“The High Court has affirmed the judgment of the Tribunal in regard to the dismissal of the claim under Section 166 of the Motor Vehicles Act, 1988. However, having due regard to the amendment of the provisions of Section 140 in 1994, the amount payable has been enhanced from Rs.25,000/- to Rs.50,000/-.

We are inclined to give the appellants the benefit of the beneficial provisions which have been enacted by Parliament. Hence, in modification of the order of the High Court, we direct that the appellants shall be entitled to an amount of Rs.5,00,000/- as compensation. However, if the amount of Rs.50,000/- which has been awarded by the High Court has already been paid over, the balance (or the entirety of Rs.5,00,000/-if no amount has been paid) shall be paid over to the appellants by 30th November, 2022.

The appeal is accordingly disposed of.”

4. The Learned Advocate representing the appellant referred to the decision cited in Bholanath Karmakar & Ors. –Vs.- Madanmohan Karmakar & Ors. Reported in AIR 1988 Cal 1.

"I had also occasion to consider this question in Gopal Chandra Kalay – Vs. State, 1981 Lab IC 422 at page 423, 425 (Sikkim) and the Union of India –Vs.- Ashok, AIR 1983 Sikkim 19 at page 23, 25, 26 where, for the reasons stated therein, I accepted this view and agreed respectfully with the views of Sandhawalia, C. J. in the Punjab Full Bench decision in Indo-Swiss Time, (supra) and the minority view of Jagannatha Shetty, J., in the Karnataka Full Bench decision in Govinda Naik, (supra). I held that where there are contrary decisions of the Supreme Court rendered by Benches of equal strength, the High Court, in theory, being bound by each one, is, in effect, bound by none and is not necessarily obliged to follow the later in point of time, but may follow the once which, according to it, is better in point of law."

5. The Learned Advocate representing the appellant referred to the decision cited in Ramkhiladi –Vs.- The United India Insurance Company reported in AIR 2020 S.C. 527

"It is further submitted by the Learned Advocate appearing on behalf of the Insurance Company that in the present case the contract of insurance specifically provides that in case of personal accident the owner cum driver is only entitled to a sum of Rs.1,00,000/-. It is submitted that therefore the deceased who had stepped into the shoes of the owner at the most may be entitled to a sum of Rs.1,00,000/- only. It is submitted that in the case of Oriental Insurance Co. Ltd. –Vs. Rajni Devi (2008) 5

SCC 736 when the compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof. It is submitted that, in the said decision, this Court did not accept the view taken by the Tribunal that while determining the amount of compensation, the only actor which would be relevant would be merely the use of the motor vehicle. It is submitted that, in the aforesaid decision, in paragraph 11, it is further observed by this Court that the liability under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient.

4.3 Replying upon the decision of this Court, in the case of *National Insurance Company. Ltd. -Vs.- Ashalata Bhowmik* (2018) 9 SCC 801, it is submitted that the parties shall be governed by the terms and conditions of the contract of insurance. It is submitted that, therefore, at the most, the claimants may be entitled to Rs.1,00,000/- only, the deceased being in the shoes of the owner.

4.4. Now, so far as the submission on behalf of the appellants original claimants that there is an amendment to the 2nd Schedule, and a fixed compensation of Rs.5,00,000/- has been specified in the case of death and, therefore, the claimants shall be entitled to Rs.5,00,000/-, it is vehemently submitted by the learned Advocate appearing on behalf of the insurance company that the said amendment shall not be applicable retrospectively. It is

submitted that, in the present case, the accident had taken place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court on 18.02.2018, i.e. prior to the amendment in the 2nd Schedule."

6. It was further concluded in view of the Notification dated 22nd May, 2018 the appellant was entitled to a sum of Rs.5,00,000/- as compensation.
7. The Learned Advocate representing the respondent nos. 3 and 4/Insurance Company submitted that the Notification dated 22nd May, 2018 issued as per Sub-Section 3 of Section 163A of the Motor Vehicles Act, 1988 by the Central Government keeping in view the prevailing cost of living, for amendment of 2nd Schedule should not have any retrospective effect. The following Judgments had been relied upon:-
 - (i) 2004(V)SCC 385 (Deepal Girishbhai Soni –Vs. United India Insurance Co. Ltd.)
 - (ii) 2009 ACJ 544 (Kanai Manna Vs. United India Insurance Co. Ltd.)
 - (iii) 2013(3) WBLR (Cal) 276 (Shampa Mallick & Ors. Vs. D.M. United India Insurance Co.)
 - (iv) New India Assurance Co. Ltd. Vs. Surjya Naskar (FMA 1588 of 2008, Order dated 17.02.2023 Hon'ble Justice B.R.De of Calcutta High Court)

8. The Learned Advocate representing the Respondent/ insurance company submitted as follows:-

The motor vehicular accident occurred on 15th January, 2004 involving two vehicles — a Tata Sumo bearing No. WB-02F/7648 driven by the victim and a bus bearing No. WB-29/2696 — leading to the unfortunate death of the appellants' son, who was earning Rs. 4,500/- per month as a driver.

The claimants invoked the provisions of Section 163A of the Motor Vehicles Act, 1988 to seek compensation under the structured formula scheme. However, both on the question of maintainability and quantum of compensation under the amended Second Schedule, fundamental questions of law arise which necessitate determination by this Hon'ble Court in the light of settled precedents.

- a) The first and foremost issue pertains to the very maintainability of the claim under Section 163A. It is a matter of record that the deceased had an income of Rs. 4,500/- per month, i.e., Rs. 54,000/- per annum, which exceeds the statutory income limit of Rs. 40,000/- as prescribed in the unamended Second Schedule.

The Hon'ble Supreme Court in *Deepal Girishbhai Soni v. United India Insurance Co. Ltd.* [(2004) 5 SCC 385] clearly demarcated the scope of Section 163A. It was held in Paras 51 and 67 that Section

163A is a self-contained code, intended exclusively for claimants within the income threshold set out in the Second Schedule. The claimant cannot elect to invoke Section 163A when the income exceeds the threshold — in such cases, the remedy lies only under Section 166, where proof of negligence is mandatory.

This principle was echoed in subsequent decisions, including:

- Kanai Manna v. United India Insurance Co. Ltd. [2009 ACJ 544]
- Shampa Mallick & Ors. v. Divisional Manager, United India Insurance Co. Ltd. [2013 (3) WBLR (Cal) 276]
- New India Assurance Co. Ltd. v. Surjya Naskar [FMA 1588 of 2008, order dated 17.02.2023]

Thus, the claim as instituted under Section 163A is ex facie not maintainable in law and is liable to be dismissed on that ground alone.

- b) The Notification dated 22nd May 2018, issued under Section 163A(3) of the Act, revises the Second Schedule to enhance the quantum of compensation to Rs.5,00,000/- in death cases. The core issue is whether such enhancement can be retrospectively applied to a case where the accident occurred in 2004 — nearly 14 years prior to the notification.

The Notification itself is categorical in its language:

"This notification shall come into force on the date of its publication in the Official Gazette."

The Hon'ble Supreme Court in *Pratap Narain Singh Deo v. Srinivas Sabata* [(1976) 1 SCC 289] held in clear terms that the relevant date for determination of compensation is the date of the accident, and not the date of adjudication or decision. This cardinal principle has been uniformly followed across decades of jurisprudence and affirmed in several judgments.

The issue of retrospective applicability of the 2018 Notification was directly addressed in *Ramkhiladi & Anr. v. United India Insurance Co. Ltd.* [AIR 2020 SC 527; 2020 (2) SCC 550]. The Hon'ble Apex Court in Paras 3.7, 4.4, 5.8, 7.1, and 9.8 held that the notification has only prospective effect, and cannot be invoked to determine compensation in cases where the accident occurred prior to its issuance.

- c) The reliance on the unreported decision of the Hon'ble Supreme Court in *New India Assurance Co. Ltd. v. Urmila Halder* [SLP (C) No. 6240 of 2019, disposed on 08.02.2024] — where retrospective application was seemingly approved — must be viewed with circumspection.

This later decision did not notice or consider the binding coordinate Bench judgment in *Ramkhiladi* (supra), nor did it consider the Four-Judge Bench ruling in *Pratap Narain Singh Deo* (supra). As such, per the doctrine of *per incuriam*, a decision rendered in ignorance of a binding precedent is not good law.

In this context, the following decisions affirm the principles governing precedential hierarchy:

- State of Bihar v. Kalika Kuer [(2003) 5 SCC 448] – A coordinate bench must follow earlier decisions or refer the matter to a larger bench.
- National Insurance Co. Ltd. v. Pranay Sethi [AIR 2017 SC 5157; (2017) 16 SCC 680, Paras 19–21, 24, 29, 30] – Emphasized consistency and application of binding precedent.
- State of M.P. v. Devendra [AIR 2009 SC 3009, Para 11] – Where there are conflicting decisions, the statute must prevail and the High Court must apply its own mind.

Thus, the authority in Urmila Halder (*supra*) cannot override the binding and reasoned decision in Ramkhiladi (*supra*), particularly when the latter rests on a larger and well-established line of precedents.

- d) It is trite that procedural law, even when amended, does not apply retrospectively unless the statute expressly provides for such operation. In *State Bank of Hyderabad v. Town Municipal Council* [(2007) 1 SCC 765], the Hon'ble Supreme Court interpreted amendments to Order VI Rule 17 CPC, and held that procedural amendments would not apply to suits or proceedings filed before the date of amendment unless specified.

The same principle must govern the 2018 Notification — which is statutory in nature and affects substantive rights. There is nothing in the language of the Notification that suggests retrospective applicability. Hence, applying it to accidents that occurred prior to 22.05.2018 would be judicial legislation, an act impermissible in law.

- e) The jurisdiction of courts to interpret statutes is constrained by the express language of the enactment. The principle of statutory interpretation prohibits the court from reading into a provision something which is not there, or from altering its scope under the guise of purposive construction.

The following authorities enunciate this principle:

- Nasiruddin & Ors. v. Sita Ram Agarwal [AIR 2003 SC 1543, Para 38]
- State of Orissa v. Joginder Patjoshi [(2004) 9 SCC 278, Para 13]
- Commissioner of Sales Tax, U.P. v. M/s. Madanlal Das [(1976) 4 SCC 464, Para 5]
- J.S. Jadav v. State of U.P. [(2011) 6 SCC 570, Paras 9, 14, 30]
- Constitution Bench decision in M.D., ECIL, Hyderabad v. B. Karunakar [(1993) 4 SCC 727] – Declared that judge-made law operates only prospectively and cannot affect settled rights retroactively.

These authorities reinforce that any judicial interpretation contrary to the explicit statutory language — such as applying a prospective

notification to an event that occurred 14 years earlier — would amount to judicial overreach.

f) In the light of the above, it is humbly submitted that:

- The claim under Section 163A is not maintainable due to the annual income of the deceased exceeding the prescribed threshold;
- The Notification dated 22nd May 2018 has no retrospective effect and cannot be applied to accidents that occurred in 2004;

9. Since the occurrence of the accident, involvement of the offending vehicle, driving licence, Insurance certificate etc. are not disputed by the Learned advocate representing the appellant/Insurance Company, this Court restricts itself only to the extent of rectifying the above-mentioned issues.

10. Considered the rival contentions of the learned Advocates representing the respective parties.

11. Whether the Notification dated 22nd May, 2018 issued under Section 163(3) of the aforesaid Act that revised the 2nd Scheduled to enhance the quantum of compensation to Rs. 5,00,000/- in death cases would be effective retrospectively or not has been dealt with by the Supreme Court in the New India Insurance Company Limited –Vs.- Urmila Halder reported in 2024 SCC OnLine SC 4983 in the following paragraphs:-

"6. Reliance was placed on the last line of the notification, which indicates that the said amendment would come into force from the date of publication in the official Gazette, which is 22nd May, 2018. It was submitted that as the accident had occurred on 11th December, 2004, the benefit of such amendment could not be granted to the respondent. In support of this contention, learned counsel referred to and relied upon various decisions of this Court in *Padma Srinivasan v. Premier Insurance Company Limited*, [(1982) 1 SCC 613]; *Shyam Sunder v. Ram Kumar*, [(2001) 8 SCC 24]; *Nasiruddin v. Sita Ram Agarwal*, [(2003) 2 SCC 577] and *Panchi Devi v. State of Rajasthan*, [(2009) 2 SCC 589].

7. It was further contended that the present case is covered by the policy under which the payment is made and the same crystallized on the date the same was entered into and subsequent developments would not alter the rights and liabilities of the parties. Thus, the contention was that the appellant would not be liable to pay any further than what it was obliged to pay under the Act prior to coming of the amendment on 22nd May, 2018.

8. Learned counsel for the respondent submitted that the High Court has rightly taken a view that it is merely a procedural amendment which has to be given retrospective effect and it is nothing substantive so as to affect the merits of the issue.

9. Having considered the matter, we do not find any reason to interfere with the judgment impugned. With regard to the judgments of this Court relied upon by learned counsel for the appellant, having gone through the same we find that they are distinguishable from the facts of the present case and thus, the ratio of those cases would not apply in the present case.

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 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."

12. In the light of beneficial legislation the Hon'ble Apex Court held that it would be necessary to entail the benefit to be passed up to the claimant in absence of any specific bar to the same meaning thereby in absence of any specific bar the notification as aforesaid can be given effect retrospectively.
13. The appellants /claimants are entitled to receive the sum of Rs.5,00,000/- along with 6% interest per annum to be paid from the date of filing of the claim application till the date of its actual realization.
14. The Learned Advocate representing the respondents/Insurance Company is to deposit the balance sum along with interest at the rate of 6% interest per annum from the date of filing of the claim application before the office of the Learned Registrar General, High Court, Calcutta within two months from the date of passing of this order.

15. The Office of the Learned Registrar General, High Court at Calcutta, shall encash the cheques and thereafter disburse the same directly to the Bank accounts of the appellants/claimants in equal proportion as mentioned in the impugned judgment of the Learned Judge, Motor Accident Claims Tribunal, Purba Medinipur at Tamluk in M.A.C. Case No. 61 of 2005/55 of 2005 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Court fees.
16. The office of the Learned Registrar General, High Court at Calcutta will instruct the claimants to provide details of their Bank accounts with relevant documentary proof, prior to such disbursal as aforesaid.
17. The instant appeal is disposed of accordingly.
18. The pending applications, if any, stands disposed of.
19. The TCR be sent down to the concerned Tribunal forthwith.
20. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(ANANYA BANDYOPADHYAY, J.)

Srimanta, A.R. (Ct.)