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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMAT 1310 of 2015

With

CAN 1/2013 (CAN No. 11693 of 2015)

Smt. Bharati Sarkar @ Mali & Anr.

-Vs-

National Insurance Co. Ltd. & Anr.

For the Appellants/claimants : Mr. Saidur Rahaman

For the respondent/insurance co. : Mr. Parimal Kumar Pahari

Heard on : 09.01.2025

Judgment on : 09.01.2025

Ananya Bandyopadhyay, J. :-

CAN 1/2013 (CAN No. 11693 of 2015)

1. The Learned Advocates for the appellants/claimants as well as the respondents/insurance company are present.
2. The application being CAN 1 of 2013 (Old No. CAN 11693 of 2015) under Section 5 of the Limitation Act had been taken up for hearing. The record revealed a delay of 73 days in filing the instant appeal.
3. Considering the averments made in the CAN application being CAN 1 of 2013 (Old No. CAN 11693 of 2015) and in view of the

beneficial legislative intent the delay of 73 days in filing the instant appeal is condoned.

4. The appeal is admitted.
5. The application being CAN 1 of 2013 (Old No. CAN 11693 of 2015) is allowed.
6. The instant appeal has been filed against the judgment dated 19th May, 2015 passed by the learned Additional District Judge, 3rd Court, Tribunal Judge, MACC, Balurghat in MAC Case No.104 of 2014 under Section 163A of the Motor Vehicles Act, 1988.
7. Both the learned advocates representing the respective parties submitted that the Learned Tribunal had granted a sum of Rs. 1,00,000/- as compensation award for the death of the victim girl aged 10 years in the accident which occurred on 16.09.2013 at about 10.30 A.M. when the minor child was hit by the trolley attached to the offending tractor. The victim child received severe injuries and succumbed to the same.
8. The Learned Advocate for the respondent/insurance company did not dispute the occurrence of the accident nor the other ancillary issues including the validity of the driving licence and insurance policy etc.

9. Considering the judgment of the Hon'ble High Court in Urmila Halder v. The New India Assurance Company Ltd¹. and the same being affirmed by the Supreme Court in Special Leave Petition² and the notification dated 22nd May, 2018, the appellants/claimants are entitled to Rs.5,00,000/- as 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, the second schedule 1(a) is as follows: -

*“Fatal Accidents:
Compensation payable in case of
Death shall be five lakh rupees.”*

10. The impugned judgment passed by the aforesaid tribunal is modified to the extent of Rs. 4,00,000/- (Rs.5,00,000-Rs.1,00,000/-) along with interest to be paid at the rate of 6 % per annum from the date of filing of the application till the date of its actual realization. The Learned Advocate for the appellants/claimants submitted to have received the compensation of Rs. 1,00,000/-.

11. The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 4,00,000/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the Learned Registrar

¹ 2019(2)TAC 143

² Special Leave Petition(Civil) No. 6260 of 2019

General, High Court Calcutta within four weeks from the date of passing of this order.

12. On receipt of the said amount, the office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants as mentioned in the award granted by the learned Additional District Judge, 3rd Court, Tribunal Judge, MAcC, Balurghat, in M.A.C. Case No.104 of 2014 on proof of proper identification of the appellants/claimants subject to payment of ad valorem Courts fees.
13. The instant appeal is disposed of accordingly.
14. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)