21.05.2026
Court No.5
D/L No.28-29
S. Gayen

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI

FMA 48 of 2025

Kanu Roy & Anr.
Versus
National General Insurance Company Ltd. & Anr.
with

FMAT(MV) 55 of 2023
with
CAN 1 of 2024

National Insurance Company Ltd.
Versus
Sri Kanu Roy @ Kanu Barman & Ors.

Ms. Priyanka Dey
Ms. Srija Bhowmik
Mr. Milan Chandra Laskar
...for the Appellant in FMA 48 of 2025
And Respondent in FMAT(MV) 55 of 2023

Mr. Hirak Barman
...for the Insurance Company

1. The claimants as well as the Insurance Company both have preferred an appeal against the award passed by the learned Motor Accident Claims Tribunal (Additional District & Sessions Judge, 2nd Court, Siliguri) in MAC Case No. 53(7) of 2017 dated 31.01.2023.

2. In the appeal preferred by the claimants the only ground taken by the claimants that the learned Tribunal has considered the monthly income of the deceased at Rs. 3300/- per

month and calculating all the heads awarded the amount of Rs. 4,82,000/-. He relied upon the Notification dated 22.05.2018 wherein the second schedule for compensation for third party fatal accident/injury claims under Section 163A of the Motor Vehicles Act was amended and submits that as per the said Notification the compensation payable in case of death shall be five lakh rupees but the learned Tribunal failed to consider the said Notification by awarding Rs. 5,00,000/- but had awarded only Rs.4,82,000/- by taking into consideration the monthly income of the deceased at Rs. 3,300/- per month.

3. Learned counsel for the claimants submits that the incident was occurred on 13.03.2017 but the Notification by amending the Section 163A came into force from 22.05.2018 but the Hon'ble Division Bench of this Court held that the Notification will be effected retrospectively and not prospectively. The matter went up to the Hon'ble Supreme Court and the Hon'ble Supreme Court in the case of ***The New India Assurance Co. Ltd. vs. Urmila Halder*** in ***SLP (Civil) No. 6260 of 2019*** has affirmed the order passed by the Hon'ble Division Bench of this Court by

holding that the Notification dated 22.05.2018 will be retrospective effect. As such, he prays for enhancement of the compensation awarded by the learned Tribunal from Rs. 4,82,000/- to 5,00,000/-.

4. The Insurance Company has preferred the appeal against the impugned award on the ground that the claimants in the claim petition have admitted their monthly income is Rs. 3300/- and total claim of the claimants was Rs. 2,20,700/- but learned Tribunal has awarded the compensation of Rs. 4,82,000/-.

5. Learned counsel for the Insurance Company has further drawn the attention of this Court that while the awarding the compensation to the claimants, the learned Tribunal has considered the loss of care and guidance of Rs. 1,00,000/-, funeral expanses of Rs. 50,000/-, loss of estate of Rs. 1,00,000/- and love and affection of Rs. 1,00,000/- but as per the schedule of Section 163A of the Motor Vehicle Act, the funeral expanses should be only Rs. 2000/-, loss of consortium is only Rs. 5000/- and loss of estate is only Rs. 2500/-. He submits that the learned Tribunal without considering the schedule of Section 163A of

the Motor Vehicle Act passed the award by awarding Rs. 4,82,000/-.

6. Heard the learned counsel for the respective parties and perused the materials on record.

7. This Court finds that by a Notification dated 22.05.2018 the compensation for the fatal accident has been fixed Rs. 5,00,000/- but the learned Tribunal has only awarded Rs. 4,82,000/- by considering the monthly income of the deceased at Rs. 3300/-.

8. In the case of ***Urmila Halder vs. New India Assurance Co. Ltd. & Ors.*** in ***FMA 446 of 2010***, the Hon'ble Division Bench of this Court has held that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied by the tribunals/this Court for determining compensation payable to the legal heirs of an accident victim or to the victim himself regardless of whether the new schedule is beneficial to them or not. The same was challenged before the Hon'ble Supreme Court in SLP (Civil) No. 6260 of 2019 and the Hon'ble Supreme Court by a judgment dated 08.02.2024 has upheld the judgment passed by the Hon'ble Division Bench of this Court.

9. Considering the judgment passed by the Hon'ble division Bench of this Court as well as the Hon'ble Supreme Court as mentioned above in ***Urmila Halder*** (supra), this Court finds that the learned Tribunal failed to consider the Notification dated 22.05.2018 though the learned Tribunal has passed the impugned award on 31.01.2023 that is after the Notification.

10. Taking into consideration of the Notification dated 22.05.2018, this Court finds that the submission made by the learned counsel for the Insurance Company on the basis of which the Insurance Company has filed the appeal cannot be taken into consideration.

11. In view of the above, the award passed by the learned Tribunal dated 31.01.2023 is modified only to the extent that the petitioner is entitled to get the compensation of Rs. 5,00,000/- instead of Rs. 4,82,000/-.

12. Learned counsel for the claimants submits that the Insurance Company has not paid the awarded amount in terms of the award passed by the learned Tribunal. Accordingly, the Insurance Company is directed to pay the compensation amount of Rs. 5,00,000/- along with interest @ 9% from the filing of the

application till the realization of the said amount by depositing the same before the learned Tribunal within a period of 60 days from date.

13. It is further directed to the Insurance Company while paying the compensation amount shall also to take into consideration of Clause 2 of the Notification dated 22.05.2018 wherein it is mentioned that on and from 01.01.2019 the amount of compensation shall stand increased by 5% annually.

14. With the above modification, **FMA 48 of 2025** is **disposed of** and **FMAT(MV) 55 of 2023** is **dismissed** and the connected application also stands disposed of.

15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

16. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all formalities.

(Krishna Rao, J.)