(2024) 10 CAL CK 0010

In the Calcutta High Court

Case No : FMA 964 Of 2008

Minara Bibi & Ors APPELLANT

Vs

National Insurance Co. Ltd. & Ors RESPONDENT

Date of Decision : 07-10-2024

Acts Referred:

Indian Penal Code — Section 279, 304
Motor Vehicles Act, 1988 — Section 163A, 164

Citation : (2024) 10 CAL CK 0010

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Niranjan Maity, Rajesh Singh, Sucharita Paul

Final Decision : Disposed Of

Judgement

Shampa Dutt (Paul) , J

1. The present appeal has been preferred by the appellants against an Order and Award dated 21.09.2006 passed by learned Additional District Judge, Fast Track Court, VIth Court, at Alipore, South 24 Parganas, in MACC No.133 of 2000, under Section 163A of the M.V Act.

2. The facts :-

"………….On 21.11.2005 at about 21.30 hours the offending vehicle No. WBA-4533 while coming from Behala Chowrasta at high speed in a rash and negligent manner along with Gangarampore Road, suddenly dashed the van rikshawpuller/Sk. Sajahan at Dakghar under P.S Mahestala causing his instant death. The victim having thus, left the world at 35 years of age, his dependent, the claimants were left uncared for. The victim according to claimants was a khalasi of an oil tanker and a van rikshawpuller as well and he had an earning of Rs.4,000/- (Four thousand) per month from both the sources. Hence, the claim case………..."

3. The opposite party no.1/owner did not contest the case, while the opposite party no.2/The National Insurance Company Ltd. contested the case by filing their written statement. The opposite party no.2 challenged the claim narratives, denying the accident by reasons of the involvement of the vehicle and sought for dismissal of the claim case.

4. The claimants examined one witness and proved relevant documents which were marked as exhibits.

5. Maheshtala Police Station case No.223 of 2005 dated 21.11.2005 was started under Section 279/304 of the Indian Penal Code, relating to the accident in this case.

6. On conclusion of hearing, the Tribunal granted compensation as follows :-

"…………MACC No.133 of 2000

Dated 21.09.2006

Keeping in mind the sublime impact of police investigation, it would quite safe for the tribunal to hold that the victim to be a van Rikshaw puller with a notional income of Rs.15,000/-(Rupees fifteen thousand) per annum at the time of accident. Thus, deducting 1/3rd of the income the calculation comes to Rs.1,50,000/-(one lac fifty thousand) (Rupees 15,000/- - Rs.5,000/-= Rs.10,000/- x 15= Rs.1,50,000/-). Together with this, claimants are entitled to Rs.2,000/- (Two thousand) as funeral expenses and Rs.5,000/-(five thousand) as loss of consortium. Thus, the total sum of the award comes to Rs.1,57,000/-(One lac fifty seven thousand). The amount so determined appears to be just, equitable and determined with reference to the life expectancy of the claimants involved in this case. All issues are thus, disposed of.

Sd/-

Motor Accident Tribunal,

Judge, A.D.J. FTC,

Alipore………"

7. Being aggrieved, the claimants have preferred the present appeal on the ground:-

That the learned Tribunal did not grant "just compensation" in the present case.

8. Considering the materials including the evidence on record, it appears that:-

i) It has been proved that the victim in the present case died in the accident in this case, involving the offending vehicle.

ii) The offending vehicle was duly insured with the respondent Insurance company (Exhibit-3).

9. Learned counsel for the appellant has relied upon a notification dated 22nd May, 2018 of the Ministry of Road, Transport and Highways and has prayed for enhanced compensation as per paragraph 2 of the second schedule under Section 163A.

10. Paragraph 2 of the said notification is reproduced:-

“(2) …..On and from the date of 1st day of January, 2019, the amount of compensation specified in the clauses (a) to (c) of paragraph (1) shall stand increased by 5 per cent annually…..”

11. Learned counsel for the Respondent No.1/ Insurance Company has vehemently opposed the prayer for enhanced compensation on the basis of the said notification on the ground that, challenging the said notification, the Judgment in Urmila Halder Vs. New India Assurance Co. Ltd. & Ors., in F.M.A. 446 of 2010 was passed by this High Court and in appeal, the Supreme Court in 2024 affirmed the judgment in Urmila Halder (Supra).

12. The relevant paragraphs of the said judgments are as follows:-

(a) In Urmila Halder Vs. New India Assurance Co. Ltd. & Ors., in F.M.A. 446 of 2010, decided on 9th August, 2018, the Calcutta High Court held:-

“9. Sub-section (1) of Section 163-A of the 1988 Act ordains that notwithstanding anything contained therein or in any other law for the time being in force, upon proof of death in an accident involving the use of a motor vehicle, compensation is payable either by the owner of such vehicle or the authorized insurer thereof as indicated in the Second Schedule to the legal heirs of the victim. The Second Schedule appended to the 1988 Act, referring to Section 163-A thereof, provides the structured formula for determining compensation.

11. As it stands now, the Second Schedule after its amendment by the said notification prescribes lump-sum compensation in the following manner:

1. Fatal accidents - Rs. 5,00,000.00 is payable as compensation in case of death;

2. Accidents resulting in permanent disability - Rs. 5,00,000.00 x percentage of disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923), provided that the minimum compensation in case of permanent disability of any kind shall not be less than Rs. 50,000.00;

3. Accidents resulting in minor injury - A fixed compensation of Rs. 25,000.00.

14. With that in view, we invited such learned advocates to address us on the following issue:

Whether, after the amendment brought about by the said notification, the new schedule would be applicable to pending claim applications under Section 163-A before the motor accident claim tribunals as well as the appeals arising out of awards delivered there under prior to May 22, 2018?

118. Therefore, the conclusion seems to be inescapable 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 issue framed in paragraph 12 is, accordingly, answered.

126. Turning to the facts in the appeal, we find that had this appeal been decided prior to May 22, 2018, the appellant would have been entitled to whatever sum were determined as payable in terms of the old schedule. Admittedly, Rs.5,00,000.00 was not payable to the appellant by the respondent no.1 any time prior to May 22, 2018 and, therefore, she was not entitled to such sum as on date she exercised her "right of action". Therefore, in each case where the claim is pending before the tribunal or if this Court has been approached in appeal as on May 22, 2018, we feel it to be the duty of the tribunal/Court to determine the amount of compensation payable to the claimant in terms of the structured formula and award interest at such rate it considers proper thereon from the date of filing of the claim application till May 21, 2018. To avoid any charge of arbitrariness, it would be safe to award interest at the prevailing bank rate of interest on term deposits on the date the award is made. Thereafter, that is from May 22, 2018, interest on Rs.5,00,000.00 may be directed to be paid till realization as per the prevailing bank rate of interest on term deposits.

127. To determine what the appellant could have lawfully claimed as compensation based on the old schedule, we need to look into the evidence. The version of the appellant that the victim was earning Rs.2,000.00 per month could not be dislodged by the respondent no. 1 in cross-examination. The victim being self-employed in the unorganized sector, the tribunal put an onerous burden on the appellant to produce documentary evidence to prove her monthly income. Having regard to the decision in Syed Sadiq v. United India Insurance Co. Ltd.: (2014) 2 SCC 735, we hold that it was not necessary for the appellant to prove the income of the victim by producing documentary evidence. The loss of dependency, thus, has to be worked out reckoning Rs.24,000.00 as the notional yearly income of the victim. Capitalizing it on a multiplier of 17, the resultant amount would be Rs.4,08,000.00. Deducting 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining herself had she been alive, and adding Rs.4.500.00 on account of loss of estate and funeral expenses, we arrive at the sum of Rs.2,76,500.00.

128. In the final analysis, we hold that the appellant shall be entitled to Rs.5,00,000.00 on account of compensation under Section 163-A of the 1988 Act read with the new schedule. However, since she has received Rs. 1,14,500.00 that was awarded by the tribunal, the respondent no.1 shall pay Rs.3,85,500.00 more to the appellant within 2 (two) months from date of service of a copy of this judgment and order on it. The appellant is further held entitled to interest as follows:

(i) @ 9% per annum on Rs.2,76,500.00 from the date of filing of the claim application, i.e., February 8, 2005 till May 21, 2018; and

(ii) @ 6% per annum on Rs. 5,00,000.00 from May 22, 2018 till such time payments of Rs. 3,85,500.00 and interest as in (i) above are effected in favour of the appellant."

(b) In appeal, the Supreme Court in The New India Assurance Co. Ltd. Vs. Urmila Halder, Civil Appeal No. ____ of 2024 (@ Special Leave Petition (Civil) No. 6260 of 2019), decided on 8th February, 2024, upheld the above judgment and held:-

"4. The short point for consideration before this Court is whether the amendment in Section 163-A 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.

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."

13. It is thus clear that the said notification relied upon was considered by the court as to its retrospective effect and the judgment in Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.(Supra) was passed and affirmed by the Supreme Court.

14. The courts while deciding the case (similar to the one as the present case) did not grant compensation applying para 2 as referred above.

15. As the said provision (Para (2) of the notification dated 22nd May, 2018) was to come into force on 1st January 2019, the court did not apply the said provision in Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.(Supra) as the case was disposed of on 9th August, 2018 and the Supreme court though upheld the judgment on 8th February, 2024, restricted the findings only in respect of the high court's judgment dated 9th August 2018.

16. Section 164 of M.V. Act replaced Section 163A of the M.V. Act vide an amendment which came into force on 01st April 2022, and thus after the said notification dated 22nd May, 2018.

17. Section 164 Motor Vehicles (Amendment) Act, 2019:-

"164. Payment of compensation in case of death or grevious hurt, etc.

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be….."

18. Clause (2) of the said notification dated 22nd May, 2018 has not been included or given effect to in the said amendment which came into effect on 1st April, 2022.

19. In the present appeal, the claim was decided by the tribunal on 21.09.2006, thus prior to 22nd May, 2018 and compensation of a sum of Rs.1,57,000/- was granted in terms of the old schedule.

20. Now, in terms of the guidelines of the Courts, in the judgments, Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.(Supra) and The New India Assurance Co. Ltd. Vs. Urmila Halder (Supra), the Appellants/Claimants are entitled to compensation of only a total sum of Rs. 5,00,000/- under section 163A of the 1988 M.V. Act.

21. Admittedly, the Appellants/Claimants have already received the amount of compensation of Rs. 1, 57, 000/- in terms of order of the Learned Tribunal. Accordingly, the Appellants/ Claimants are now entitled to the balance amount of compensation of Rs. 3, 43, 000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.

22. Respondent No. 1/ Insurance Company, thus is directed to deposit the balance amount and the interest as indicated above, by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date. The Respondent No. 1/ Insurance Company, shall also pay the interest upon the sum of Rs. 3, 43, 000/- at the rate of 6% till deposit if not already paid, within the period as specified above.

23. Upon deposit of the aforesaid amount and the interest, learned Registrar General, High Court, Calcutta shall release the amount in favour of the Appellants/Claimants in equal proportion, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.

24. The appeal being FMA 964 of 2008 stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

25. All connected applications, if any, stand disposed of.

26. Interim order, if any, stands vacated.

27. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

28. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

