IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Md. Shabbar Rashidi

FMA 1132 of 2021

Soma Das And Another

Vs.

The Manager, Magma HDI General Insurance Company Limited And Another

For the appellants	:	Mr. Soujanya Bandyopadhyay, Adv.
For the respondents	:	Mr. Rajesh Singh, Adv.
Heard on	:	17.09.2026
Judgment on	:	28.09.2026

Md. Shabbar Rashidi, J.:-

1. The appeal being FMA 1132 of 2021 at the behest of the appellants/claimants challenging the judgment and order passed by learned Judge, Motor Accident Claims Tribunal, VIIth Bench, City Civil Court, Calcutta on August 16, 2018 in MAC Case No. 317 of 2014.

2. By the impugned judgment and order, the learned Judge allowed the MAC Case No. 317 of 2014 and directed opposite party No. 1 i.e. the registered owner cum driver of the offending truck to pay a sum of ₹3,49,500/- along with an interest at the rate of 10% per annum from the date of filing of the case till realization of the entire amount by issuing two account payee cheques in the name of the claimant No. 1 Soma Das and Claimant No. 2 Gour Gopal Das in equal ratio within two months from August 16, 2018.

3. It was contended by the appellants in FMA 1132 of 2021 that the learned Tribunal Judge erred in passing the impugned award in the claim case filed under Section 163A of the Motor Vehicles Act, 1988 as amended. The appellants/ claimants minor daughter namely Shinjini Das @ Srinjini Das, aged about 5 years and 6 months died in a fatal Motor Vehicle Accident on 19-08-2014 when a truck bearing No. WB-23C-2832 dashed from behind the Motor Cycle bearing No. WB-24F-8109 on which the deceased was riding as a pillion rider on her way to school, resultantly she fell down and was ran over by the said truck and was taken to a nearby hospital but was declared as brought dead. The specific case was started by the Belghoria Police Station against the driver of the offending truck on the basis of a written complaint lodge by claimant No. 2 Gour Gopal Das. It is stated that the victim was the only issue of the parents. The unexpected, pathetic, untimely loss of life of the victim girl could not be measured by any pecuniary scale and hence the claim case being MAC Case No. 317 of 2014 was filed.

4. It was submitted by learned Advocate for the appellants/claimants that while passing the impugned award, the learned Tribunal gave an erroneous direction to the registered owner cum driver of the offending truck to pay Rs.3,49,500/- including interest to the claimants/appellants and has exonerated the Magma HDI General Insurance Co. Ltd. to pay any compensation. It is further submitted that the learned Judge completely ignored the principle of pay and recovery and also ignored the performance of contract being vested upon Magma HDI General Insurance Co. Ltd. in connection with the policy of insurance issued by their office in favour of registered owner cum driver of offending truck.

5. It was further submitted by the learned Advocate for the claimants/appellants that as per the amended Schedule II of the Motor Vehicles Act of 1988, the claimants were entitled to an award of Rs. 5,00,000/-. The learned Tribunal Judge erred in law in awarding the compensation of ₹3,49,500/-. After the amendment in Schedule II of the Act of 1988, the amount of compensation ought to have at a minimum of ₹5,00,000/-.

6. In support of his contention, learned Advocate for the claimants/appellants relied upon a Gazette notification issued by Ministry of Road Transport and Highways dated May 22, 2018. Learned Advocate for the claimants/appellants also relied upon ***2018***

SCC OnLine Cal 11751 (Urmila Halder vs. New India Assurance Co. Ltd. & ors).

7. The learned Advocate for the appellants/claimants submitted that the learned Tribunal Judge completely ignored the negligent attitude and behaviour of Magma HDI General Insurance Co. Ltd. in compliance of order passed by the Learned Tribunal and the insurance company caused harassment to the appellants by filing the written statement after passing of 16 months from the date of receiving notice and also by suppression of material facts during the course of their evidence. In the written statement the opposite party No. 2/ respondent No.1, the Magma HDI General Insurance Co. Ltd denied the material allegations made out in the claim petition and specifically stated that the driver of the offending vehicle No. WB-23C-2032 was not holding a valid and effective driving license at the time of accident and was not qualified for holding or obtaining such driving license. It was also stated that the insurance company was not liable to pay compensation for a wilful breach of terms and conditions of insurance policy by the opposite party No. 1, Alef Sekh who was driving his commercial vehicle No. WB-23C-2832 without holding a proper and valid driving license and the insurance company prayed for dismissal of the MAC Case No. 317 of 2014 with costs.

8. On the basis of the pleading put by the parties, the learned Tribunal issued as many as seven issues for adjudication of the claim case which are as follows:

> "*1) Is the case maintainable in its present form and law?*
> *2) Have the claimants cause of action to file the case against the O.Ps?*
> *3) Whether the motor accident in question took place on the relevant date and time?*
> *4) What was the age and income of the deceased?*
> *5) Whether the offending vehicle had valid insurance policy at the time of motor accident in question?*
> *6) Are the petitioners entitled to get compensation as prayed for?*
> *7) To what other relief/reliefs, if any, are the petitioners entitled too?*

9. In course of trial, the claimants relied upon several documents like First Information Report, seizure list, charge-sheet, insurance policy, post mortem report and other several documents which were admitted in evidence.

10. The issues Nos. 1 and 2 were not pressed by the learned advocates of the respective parties. The Learned Tribunal Judge, after going through the claim petition, written statement and other documents filed with record found the claim case being MAC Case No. 317 of 2014 perfectly maintainable and claimants to have cause of action to file the claim case under Section 163A or the Motor Vehicles Act against the opposite parties and therefore answered the issues in favour of the claimants.

11. The five issues Nos. 3 to 7 being interrelated were taken up by the learned Tribunal Judge for consideration together. Upon consideration of the evidence of P.W. 1 and O.P.W. 1 and documentary evidence adduced on behalf of the claimants as well as on behalf of opposite party No. 2/ Insurance company, the learned Tribunal Judge decided that by preponderance of probability the accident took place out of the use of truck bearing No. W.B.-23C-2832 and motor cycle bearing No. W.B.-24F-8109 and that Shinjini Das @ Srinjini Das suffered fatal injuries which caused her subsequent death.

12. The learned Tribunal Judge also decided that police did not find any material in course of investigation against the defacto complainant being Claimant No. 2 and prima facie although there was involvement of Motor Cycle No. W.B.-24F-8109 relating to the accident in question, but on part of motorcyclist (claimant No. 2 Gour Gopal Das) prima facie no rash and negligence was found and thus the learned Tribunal Judge decided that the concept of contributory negligence on part of Claimant No. 2 is not applicable and the accident was the result of absolute fault on part of the driver of truck bearing No. W.B.-23C-2832.

13. Since, the claim application was under Section 163A of the Act of 1988, the learned Tribunal Judge held that the claimants were entitled for a compensation for the death of the victim occurred due to rash and negligent driving by the driver cum owner of the offending vehicle, proceeded to calculate the quantum of the compensation required to be awarded on structured formula basis provided in such section. The learned Tribunal, in calculating the compensation to be awarded, took into consideration that the victim was aged about 5 ½ years, a school going child and if the accident would not have occurred and had she been alive, she was expected to have a bright and successful career. The learned Tribunal also took into consideration serious mental pain and agony suffered by the claimants/appellants due to the untimely and unfortunate death of their only child which could not be compensated by any pecuniary scale. On the basis of a structured formula basis, the learned Tribunal awarded a sum of ₹3,49,500/- to the claimants/appellants.

14. As it transpires from the materials on record, the accident took place on August 19, 2014 and the victim expired on that very day on her way to the hospital. The claim case was decided on August 16, 2018.

15. The provisions of the Motor Vehicles Act of 1988 underwent an amendment by a notification issued by Ministry of Road Transport and Highways. Such amendment came into force from the date of its notification in the official Gazette i.e. May 22, 2018 which reads as follows:-

"MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

NOTIFICATION

New Delhi, the 22nd May, 2018

S.O. 2022(E).*- In exercise of the powers conferred by sub-section (3) of section 163A of the Motor Vehicles Act, 1988 (59 of 1988), the Central Government, keeping in view the cost of living, hereby makes the following amendment to the Second Schedule to the said Act, namely:-*

In the Motor Vehicles Act, 1988, for the Second Schedule, the following Schedule shall be substituted namely:-

"THE SECOND SCHEDULE

(See Section 163A)

SCHEDULE FOR COMPENSATION FOR THIRD PARTY FATAL ACCIDENTS/INJURY CASES CLAIMS

1. ***(a) Fatal Accidents:***

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

   (b) Accidents resulting in permanent disability:

   Compensation payable shall be = [Rs. 5,00,000/- x percentage 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 fifty thousand rupees.

   (c) Accidents resulting in minor injury:

   A fix compensation of twenty five thousand rupees shall be payable:

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

[F. No.RT-11021/65/2017-MVL]

ABHAY DAMLE, Jt. Secy."

16. The amended Second Schedule of the Act of 1988 provides for compensation of death to be ₹5,00,000/-. In view of the amended Second Schedule appended to the Act of 1988, I find force in the contention of the learned Advocate for the claimants that the learned Tribunal erred in not granting the minimum amount of compensation as per the amended Second Schedule of the Act of 1988.

17. A Division Bench of this Hon'ble Court, in the case of ***Urmila Halder*** (supra) laid down to the following observations:-

> *"110. An interesting feature is discernible in the new schedule which is quite dissimilar to the old schedule. The age of the victim of an accident caused by the use of a motor vehicle and his earning, on the date of such accident, were very important for determining the compensation payable by the tortfeasor on the basis of the structured formula. An appropriate multiplier had to be selected considering the victim's age. The new schedule makes no provision for determination of compensation based on the age of the victim. Regardless of who the accident victim is, an adult or a minor and whether the victim was an earning member or not, if the accident causes death, the compensation would be a fixed amount of Rs. 5,00,000.00. Therefore, the victim's age and earning are no longer relevant. A fortiori, the date of the accident too may not be of much relevance having regard to the plain language of the section which does not give any additional importance to the aspect of 'the date of accident' except that the 'accident' causing either death or physical disablement must have involved the use of a motor vehicle, which have to be proved. These are the only proof required for a claimant to succeed in a claim application under Section 163-A of the Act. In view of*

our finding that the Second Schedule is not part of substantive law but is procedural law, there is no difficulty in holding the new schedule to be applicable for claim cases which are alive either before the tribunal or are pending adjudication before the high courts in appeal but with the caveat that it will not apply to claim cases which stand closed by reason of attainment of finality of the awards upon acceptance by the parties of the tribunal's determination made therein.

*111. *** *** ****

112. First, having regard to the said notification, it is clear as crystal that the Central Government, in its wisdom, has done away with the structured formula contemplated by the old schedule and replaced it with a new schedule in terms whereof lump-sum amount of Rs. 5,00,000.00, as noticed above, is to be paid as compensation to the legal heirs of a deceased victim. Importantly, though the said notification has come into force on and from May 22, 2018, it does not expressly or by necessary intendment make it inapplicable to claim applications/appeals which are pending before the judicial for a as on that date. Further still, sub-section (1) of Section 163-A of the Act makes no reference to the date of the accident as relevant for determining compensation that is payable. This, in our view, is of paramount importance. Death or physical disablement caused by an accident involving the use of a motor vehicle being the sine qua non for award of compensation under Section 163-A of the 1988 Act and upon the same being proved before the tribunal, the statute ordains that the owner of the offending motor vehicle or the authorized insurer shall be liable to pay … compensation, as indicated in the Second Schedule (underlining for emphasis by us). It is not that by the amendment, a new or additional obligation is being imposed on the owner/authorized insurer of the offending vehicle. What the said notification has brought *about is a change in the methodology for determining compensation, without affecting the obligation. The obligation, i.e., the words underlined above, would mean whatever sum for which there is an existing obligation to pay in praesenti or in other words, what is presently payable. Subsection (1) of Section 163-A read with sub-section (3) thereof sufficiently puts the owner/authorized insurer on guard that whatever compensation is payable according to the Second Schedule has to be paid. It is not that the Second Schedule as on date the accident occurs is decisive. In our view, the words underlined above are wide enough to cover all cases in future, post May 21, 2018 (a day prior to issuance of the amending notification), where awards are made by the tribunals notwithstanding what the contents of the old schedule were and notwithstanding that when the claim applications had been filed, the Second Schedule was different in its contents than what it is on the date of the award. Whatever is there in the Second Schedule on the date the award is to be pronounced being the legislative mandate, has to be followed by the tribunal in determining compensation. The law does not cast a duty on the tribunal to look into the contents of the Second Schedule which has ceased to exist by reason of substitution vide the said notification while dealing with claim applications that were filed when the old schedule was in force. The same position would prevail when the high court considers an appeal where the quantum of compensation determined by the tribunal is challenged by the claimant(s) as insufficient and not in accordance with the structured formula available in the old schedule. An appeal being a continuation of the original proceedings, we are inclined to the view that while deciding a claim for compensation under the said section, it is also for the high court to look into the Second Schedule as it stands on the date the appeal comes up for* *final decision and to award compensation in line with it subject of course to a preceding finding based on the evidence on record that the death of the victim had occurred due to an accident involving the use of a motor vehicle. However, the beneficial effects of the said notification cannot be taken advantage of by claimants who have accepted an award based on the structured formula in the old schedule and have not carried the award in an appeal, thereby giving it finality, or in appeals where the challenge is confined only to omission of the tribunal to award interest on the sum determined as payable on account of compensation.*

18. The Bench further held as follows:-

125. 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."

19. An appeal was carried to the Hon'ble Supreme Court against the judgment passed in ***Urmila Halder*** (supra) and the Hon'ble Supreme Court in the case of ***The New India Assurance Co. Ltd. vs. Urmila Halder*** reported in ***2024 SCC OnLine SC 4983*** affirmed the same to the following:-

"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."*

20. As to the contention of learned Advocate for the respondent-insurance company, the accused driver and registered owner of the vehicle bearing No. W.B.-23C-2832 was holding a fake driving licence and according to him the accused driver and registered owner of the vehicle bearing No. W.B.-23C-2832 was the policy holder of the insurance policy of the vehicle who had completely violated the terms and conditions of the insurance policy and of the Motor Vehicles Act, 1988 and as such the insurance company was not liable to pay compensation awarded by the Tribunal. In this regard the Hon'ble Supreme Court, in the case of ***Reliance General Insurance Company Ltd. vs. Om Prakash and Others*** reported in ***2026 SCC OnLine SC 1445*** held as follows:-

> *"18. Following the dictum above, the appeal is allowed. The appellant insurer cannot be held liable to make good the award. The final burden shall be on both the employer and the driver. In the order issuing notice, we had directed that the amount as computed be released in favour of the claimants.*

> ***In view of the above discussion, we hold the principle of 'pay and recover' to be applicable in this case. The appellant-insurer shall therefore be at liberty to take steps in accordance with law.***"
>
> (emphasis supplied)

21. In view of the aforegone discussions and applying the principles laid down by this Hon'ble Court in ***Urmila Halder*** (supra), I am of the opinion that the claimants are entitled to get the minimum compensation provided in Second Schedule of the Act of 1988 to the tune of Rs. 5,00,000/-. The aforesaid claim amount shall also carry interest at the rate of 6% per annum from the date of filing of the claim application till realization. The amount of compensation together with interest as directed by this judgment and order hall be deposited by the insurance company with the learned Registrar General within 6 weeks of the communication of this order. Learned Registrar General is requested to disburse the said amount to the two claimants in equal shares as directed by the learned tribunal.

22. In view of the ratio laid down in the case of ***Om Prakash*** (supra) the insurance company shall be at liberty to take steps in accordance with law.

23. With such observations and directions, **FMA 1132 of 2021** disposed of, however, without any order as to costs. Connected applications, if any, shall also stand disposed of.

24. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]