(2014) 07 P&H CK 0485

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 2408 of 2012(O&M)

Balwinder Singh	APPELLANT
Vs	
Veena Sharma	RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 163-A

Citation : (2014) 07 P&H CK 0485

Hon'ble Judges : Rakesh Garg, J

Bench : Single Bench

Advocate : Amit Arora, Advocate for the Appellant; P.S. Sekhon and T.K. Joshi, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Garg, J.—The injured claimant has filed the instant appeal challenging the impugned award arising out of MACT No. 17 of 2009 claiming further enhancement in the compensation as granted by the Tribunal.

2. Briefly stated, the claimant sought compensation u/s 163-A of the Motor Vehicles Act, 1988 (in short ''the Act''), on account of multiple grievous injuries caused to him in a motor vehicular accident due to the use of the offending vehicle i.e. Car No. PB-02-AZ-4150 which was being driven by respondent No. 2 and owned by respondent No. 1.

3. While determining the compensation at Rs. 4,17,401/- payable in favour of the appellant, the Tribunal observed as under:

15. Since issue No. 1 has been proved in favour of the claimant, so the claimant is entitled to receive the compensation. Now the question arises as to for what amount, the claimant is entitled to compensation. Ld. Counsel for the respondent No. 3 while relying upon the Division Bench judgment of the Hon''ble Calcutta High Court reported in ICICI Lombard General Insurance Co. Ltd. Vs. Md. Arshad and another, has argued that even if Ex. A1 to Ex. A158, the medical bills have

been proved on record but so far as the petition u/s 163-A of the Act is concerned, no amount more than Rs. 15, 000/- can be given to the claimant towards the medical expenses. He has argued that the claimant is only entitled to the medical expenses to the tune of Rs. 15,000/-.

16. Coming to the second aspect as to what was the earning capacity of the claimant, the claimant has alleged that he was earning Rs. 40,000/- per annum from agriculture as well as dairy farming and when he appeared in the Court, he in his affidavit Ex. AI supported the same. When he was cross examined by the Company, he has admitted that he was having six buffaloes but he never kept any account of the sale and purchase of the milk. He further failed to place on record any of the receipt of the purchase of the buffalo, out of which, two were purchased from Ram Singh. He was put the suggestion that he was not having any buffalo in his possession nor he was earning anything by selling the milk but he denied the same but the fact of the matter is that the claimant has failed to produce on record any of the document or any of the satisfactory evidence which could show that he was earning Rs. 40,000/- per annum. I am of the view that so far as the assessment of the income of the claimant is to be assessed, it has to be assessed as per the Schedule attached to the Motor Vehicle Act and so far as the earning capacity of the claimant is concerned, as per the 2nd Schedule, his income is assessed to be Rs. 5,000/- per annum. Relying upon the authority cited supra, if the earning capacity of the claimant is assessed to be Rs. 15,000/- per annum and his disability as per Ex. A1/A which is 80%, while keeping in view the age of the claimant to be 35 years, the multiplier of 16 has to be applied and by applying so, the income of the claimant comes out to be Rs. 2,40,000/- and if he has disability to the extent of 80%, then he has his income to the tune of Rs. 1,92,000/-.

17. So far as the filing of the medical expenses bills are concerned, in the light of the authority cited supra, I am of the view that over and above the provisions of Section 163-A of the Act which provides for maximum medical expenses not exceeding Rs. 15,000/- which can be granted and if we calculate one time payment as provided behind the schedule, not to exceed Rs. 15,000/-, the only bill Ex. C2 placed on the record is to the tune of Rs. 1,34,025/-. In the light of the authority cited supra, one time payment of more than Rs. 15,000/- cannot be allowed and therefore, pertaining to Ex. C2, it is observed that the claimant is only entitled to Rs. 15,000/- of the amount of Ex. C2. Regarding rest of the bills, if these bills are calculated, those are less than Rs. 15, 000/- for one time payment, for which, the claimant is entitled as per the schedule and, therefore the total amount comes out to be Rs. 2,20,401/- if the calculation of Ex. C1, Ex. C3 to Ex. C198 is made.

18. So far as the arguments of Ld. counsel for the respondent No. 3 is concerned that the bills have not been placed on the record, since the bills are coming from the proper custody and these are carbon copies, and there was no objection at the time of exhibition of the same, so these bills can be read into evidence as the

proceedings before the Tribunal under the Act are summary in nature. While calculating the total amount, it comes out that the claimant is entitled to the medical expenses to the tune of Rs. 2,20,401/- and so far as the loss of income is concerned, he being disabled to the extent of 80% is concerned, by applying the aforesaid principle of calculation, he is entitled to claim compensation to the tune of Rs. 2,29,700/-. The total amount for which the claimant is entitled to recover comes out to be Rs. 4,12,401/-. He is also entitled to claim Rs. 5,000/- towards other misc. expenses and thus, in all, the claimant is entitled to recover Rs. 4,17,401/- from the respondents."

4. Thus, the Tribunal held that appellant was entitled to a sum of Rs. 4,17,401/- for the injuries taking his income at Rs. 15,000/- per annum as per the Second Schedule of the Act and keeping in view his disability at 80% and the age of 35 years by applying a multiplier of 16 holding that he was entitled to compensation of Rs. 1,92,000/- as loss of income further granting medical expenses to the extent of Rs. 15,000/- as one-time payment as per the provisions of Section 163-A of the Act and also granting a sum of Rs. 2,20,401/- also for medical expenses further granting a sum of Rs. 5000/- towards other miscellaneous expenses.

5. The appellant has filed the instant appeal for further enhancement of compensation.

6. However, counsel for the appellant could not show as to how the appellant was entitled to more compensation. In fact, this Court finds that the claim petition was filed by the appellant u/s 163-A of the Motor Vehicles Act and as per the aforesaid provisions, injured claimant was entitled to a lump sum amount of Rs. 15,000/- towards medical expenses whereas in the instant case, he has been held entitled to a further sum of Rs. 2,20,401/- towards medical expenses in addition to a sum of Rs. 15,000/- as provided under the Act. However, in the absence of any appeal on behalf of the Insurance Company challenging the grant of said amount of Rs. 2,20,401/- towards medical expenses, this Court is not inclined to interfere in the amount awarded in the appeal filed on behalf of the claimant for further enhancement of compensation and the question of legality of the grant of said compensation towards medical expenses is kept open and this Court restrains itself from commenting upon the validity of the grant of said compensation in favour of the appellant.

7. Dismissed.

