
(2012) 12 DEL CK 0347
In the Delhi High Court
Case No : MAC. APP. 1045 of 2012

ICICI Lombard General Insurance Co. Ltd.	APPELLANT
Vs	
Radhey Shyam and Others	RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2012) 12 DEL CK 0347

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Virender Prabhakar, Proxy Counsel for Ms. Suman Bagga, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mittal, J.

C.M. APPL No. 16444/2012

1. There is a delay of 122 days in filing the Appeal. For the reasons as stated in the Application, the delay in filing the Appeal is condoned.
2. The Application stands disposed of. MAC. APP. 1045/2012
3. The Appeal is for reduction of a compensation of Rs. 4,73,500/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents No. 1 to 4 (Claimants) for the death of Smt. Mamta, who died in a motor vehicle accident, which occurred on 16.08.2010.
4. The only ground of challenge is that in a Petition u/s 163A of the Motor Vehicles Act no compensation could have been awarded towards loss of love and affection.
5. In the instant case, the Claims Tribunal awarded a sum of Rs. 80,000/- towards loss of love and affection.

6. It is no longer res integra that in a petition u/s 163A of the Act, compensation has to be awarded as per the structured formula. This question was dealt with in great detail in a judgment of this Court in New India Assurance Co. Ltd. v. Pitamber & Ors., MAC. APP. 304/2009 decided on 23.01.2012. This Court referred to the decision in Oriental Insurance Company Limited v. Smt. Pataso & Ors., MAC APP. 962/2005 decided on 01.09.2008; Oriental Insurance Company Limited v. Om Prakash & Ors., 1 (2009) ACC 148; Jagdish & Anr. v. Madhav Raj Mishra and Anr. MAC APP. 190/2011 decided on 19.04.2011; and Oriental Insurance Co. Ltd. Vs. Anita Devi and Others, , decided on 10.05.2011; The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., ; and Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, ; and held that in a Petition u/s 163A of the Act, there is a cap of Rs. 40,000/- on the annual income and the compensation including non-pecuniary damages have to be awarded as per the Second Schedule.

7. In view of the above, the Claims Tribunal erred in awarding a sum of Rs. 80,000/- towards loss of love and affection. Thus, the Respondents No. 1 to 4 (Claimants) are not entitled to a sum of Rs. 80,000/- under the head of loss of love and affection.

8. The compensation is reduced by Rs. 80,000/-. Consequently, the compensation stands reduced from Rs. 4,73,500/- to Rs. 3,93,500/-

9. By an order dated 18.09.2012, a sum of Rs. 3,89,500/- was ordered to be deposited and released in favour of Respondents No. 1 to 4. Rest of the compensation of Rs. 4,000/- along with proportionate interest shall be deposited with the Claims Tribunal within six weeks.

10. The amount of compensation deposited with the Claims Tribunal shall be disbursed in favour of Respondents No. 1 to 4 in terms of the order passed by the Claims Tribunal.

11. The Appeal is allowed in above terms.

12. Statutory deposit of Rs. 25,000/-, if any, shall be refunded to the Appellant Insurance Company. Pending Applications stand disposed of.