(2016) 03 BOM CK 0230

In the Bombay High Court

Case No : First Appeal No. 771 of 2015.

National Insurance Company Limited — APPELLANT

Vs

Chandraprabha and Others — RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2016) AAC 1088 : (2016) 4 AIRBomR 750 : (2016) 2 AnWR 395

Hon'ble Judges : R. K. Deshpande, J.

Bench : Single Bench

Advocate : C.A. Anthony, Advocate, for the Appellant; S.D. Chopde, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

R. K. Deshpande, J. (Oral) - In Motor Accident Claim Petition No. 138 of 2013 filed under Section 163-A of the Motor Vehicles Act, the Tribunal has awarded total compensation of Rs. 5,71,800/- together with interest at the rate of 8.50% per annum from the date of filing of the petition till its actual realization. This award dated 30.04.2015 passed by the Motor Accident Claims Tribunal is the subject matter of challenge in this appeal by the National Insurance Company Limited.

2. The learned counsel for the appellant Shri Anthony submits that the Tribunal has committed an error in awarding 30% additional compensation on account of loss of future prospects and has also committed an error in awarding compensation of Rs.1,00,000/- on account of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of love and affection. He further submits that the Tribunal has awarded interest at the rate of 8.50% per annum which should not have been more than 7.5%. He has relied upon the decision of the Apex Court in the case of Smt. Sarla Verma and ors v. Delhi Transport Corporation and Anr reported in AIR 2009 SC 3104 and the another decision of the Apex Court in case of Dharampal and others v. U.P. State Road Transport

Corporation reported in 2008 ACJ 2041.

3. Shri Chopade, the learned counsel appearing for the respondents/claimants has relied upon the decision of the Apex Court in case of Smt. Sarla Verma, cited supra, and has urged that the Tribunal was right in awarding the compensation on account of future prospects and under non pecuniary heads. He has supported the decision of the Tribunal.

4. The point for determination is as under;

Whether the Tribunal was right in awarding compensation under the heads of loss of future prospects and non pecuniary damages and the interest at the rate of 8.5%?

5. The claim petition is under Section 163-A of the Motor Vehicles Act and it will be governed by the structured formula of compensation provided in the second schedule under the said Act. The second schedule provides the general damages in addition to compensation on account of funeral expenses ? Rs. 2000/-, on account of loss of consortium ? Rs.5000/-, on account of loss of estate ? Rs.2500/- and on account of medical expenses not exceeding Rs.15,000/- upon production of bills. The second schedule does not include the award of compensation on account of loss of future prospects. Hence 30% additional to the income considered by the Tribunal cannot be sustained.

6. The decision of the Apex Court in Smt. Sarla Verma''s case, cited supra, was on the provision of Section 166 of the Motor Vehicles Act, which makes the claimant entitled to a just compensation and the Apex Court has made it clear in paragraph 20 of the said decision that it was not dealing with the case under Section 163-A of the Motor Vehicles Act, thereby meaning that the ratio laid down in the said decision is applicable only to the cases under Section 166 of the Motor Vehicles Act. Unless there is an amendment to the provisions of section, namely Section 163-A of the M.V. Act, it would not be permissible for the Tribunal to award the amount over and above one which is prescribed under the head of non pecuniary damages. The Tribunal has, therefore, committed an error in granting funeral expenses of Rs.25,000/- and Rs.10,000/- on account of love and affection which are not in conformity with the provision of second schedule.

7. So far as the award of interest at the rate of 8.5% is concerned, the decision of the Apex Court in Dharampal''s case, cited supra, the Apex Court has held that the rate of 7.5% would be appropriate rate of interest. Hence, the Tribunal Committed an error in awarding the interest at the rate of 8.5%.

8. In the result, the first appeal is party allowed and consequently, the award passed by the Motor Accident Claims Tribunal impugned in this appeal needs to be modified as under;

The claimants would be entitled to compensation of Rs.3,36,000/- towards loss of dependency. In addition to it, the claimants would be entitled to Rs.2000/- towards funeral expenses, Rs.5,000/- towards loss of consortium, Rs.2,500/-

towards loss of estate and thus, the total compensation payable is arrived at Rs.3,45,500/-. The medical expense bills were not produced and hence, there is no question of awarding any compensation on this count. The claimants would be entitled to interest at the rate of 7.5% per annum on the total amount of compensation with effect from the date of filing of the claim petition till its realization.

9. The appellant Insurance Company has deposited Rs.6,40,645 in this Court. The Registrar (Judicial) shall accordingly calculate the amount payable to the claimants in terms of this judgment and shall permit the claimants (respondent nos. 1 and 2) to withdraw the same with proportionate interest accrued thereon. The balance amount, if any, shall be refunded to the appellant Insurance Company along with proportionate interest, if any, accrued thereon. No order as to costs.