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In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (C) No. 466 of 2012.

National Insurance Company Limited, through Branch Manager, National Insurance Co. Ltd. Meenu Complex, Kosabadi Korba, Tahsil and District Korba (Chhattisgarh) - Appellant @HASH Virendra Kumar Singh Yadav @ Jagdish, aged about 32 years, S/o Shivshankar Ya

Date of Decision : 05-08-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2016) AAC 2279

Hon'ble Judges : Deepak Gupta, CJ.

Bench : Single Bench

Advocate : Shri. Qamrul Aziz, Advocate, for the Appellant; Shri. Dharmesh Shrivastava, Advocate, for the Respondent No. 1

Final Decision : Partly Allowed

Judgement

Deepak Gupta, CJ. - In this appeal by the insurer, the only question involved is whether the Motor Accidents Claims Tribunal was right in awarding as compensation for medical expenses a sum beyond the upper limit of Rs. 15,000/- provided in Schedule II of the Motor Vehicles Act, 1988 (for short ''the Act'') while passing the impugned award in a claim petition filed under Section 163A of the Act.

2. To understand the issue involved, it would be pertinent to mention that under Section 163A of the Act, there was no concept of ''no fault liability'' except under Section 140 of the Act. Section 163A of the Act was enacted for grant of immediate relief to those persons whose annual income is not more than Rs. 40,000/- per annum and who wants to claim compensation on the basis of structured formula. By now, the law is well settled that the option is with a Claimant to either file a claim under Section 163A or Section 166 of the Act. If a Claimant opts to file a claim petition under Section 163A of the Act, he is not required to prove any negligence on the part of the driver of the offending vehicle and in such a case the compensation has to be awarded on structured formula basis as per Second Schedule of the Act.

3. Section 163A of the Act reads as follows:

"163A. Special provisions as to payment of compensation on structured formula basis. - (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 permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. - For the purposes of this sub-section, ''''permanent disability'''' shall have the same meaning and extent as in the Workmen''s Compensation Act, 1923 (8 of 1923)

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other persons.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule. "

4. Sub-section (1) of Section 163A of the Act clearly lays down that the compensation has to be awarded as indicated in the Second Schedule of the Act to the legal heirs or the victim, as the case may be. Sub-section (3) of Section 163A of the Act empowers the Central Government to amend the Second Schedule from time to time, keeping in view the cost of living by a notification in the Official Gazette of the Central Government. For reasons best known to the Central Government, it has never thought it fit to amend the Second Schedule. However, this does not empower the Court to make an amendment to the Second Schedule and the power to amend the Second Schedule lies only with Parliament. The Court can assess compensation under Section 163A of the Act as per structured formula given in the Second Schedule. Even the Apex Court, on many occasions, has pointed out that the Second Schedule abounds with mistakes. Even then the Apex Court has restrained from itself correcting the mistakes only on the ground that it is for Parliament to do so.

5. Under Section 163A of the Act, the Tribunal cannot pass an award at its discretion. Once the Tribunal determines the age and income of the deceased in a death case and age, income and percentage of disability of a victim in an injury case, the Tribunal, while assessing compensation in cases filed under Section 163A of the Act, is required to follow and award compensation as per the Second Schedule of the Act. Under the Second Schedule, in a case of death, only Rs. 2,000/- can be awarded under the head funeral expenses. This Court is aware of the fact that normally in a petition filed under Section 166 of the Act an amount of Rs. 20,000/- is awarded under this head. In a claim petition filed under

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Section 163A of the Act, this Court is bound to award only Rs. 2,000/- under the head funeral expenses. Similarly, in a claim under Section 166 of the Act, award for loss of consortium can go upto Rs. 50,000/- to Rs. 1,00,000/-. However, in a claim under Section 163A of the Act, there is a cap of only Rs. 5,000/- for award under the said head.

6. Likewise, in the instant case, which was preferred under Section 163A of the Act before the Claims Tribunal, merely because heavy medical expenses are involved, the cap of Rs. 15,000/- cannot be ignored. The Second Schedule of the Act clearly indicates that the award for medical expenses shall be commensurate to the actual expenses incurred, but not exceeding Rs. 15,000/-. In a petition under Section 163A of the Act, the Tribunal cannot award a paisa more and a paisa less than the amount computed under the Second Schedule of the Act.

7. Therefore, I am clearly of the view that the Claims Tribunal had no jurisdiction to award an amount beyond Rs. 15,000/- on account of medical expenses in a claim petition filed under Section 163A of the Act.

8. In view of the above discussion, the appeal is partly allowed and the compensation awarded under the head of medical expenses is reduced from Rs. 1,36,905/- to Rs. 15,000/-. The award passed by the Claims Tribunal is modified accordingly. Rest of the impugned award shall remain intact.

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