(2012) 02 GUJ CK 0122

In the Gujarat High Court

Case No : First Appeal No. 1841 of 2002

New India Assurace Company Ltd. APPELLANT

Vs

Faridaben Haroon @ Ibrahim Lohar and Others RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2012) 02 GUJ CK 0122

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Vibhuti Nanavatis 1, for the Appellant; Mehul S. Shah for Defendant(s) 1 - 7 and Mr. Suresh M. Shah for Defendant(s) 1 - 7, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice K.S. Jhaveri

1. This appeal is directed against the judgment and award dated 30.05.2002 passed by the Motor Accident Claims Tribunal (Aux.), Kachchh at Bhuj (for short, "the Tribunal") in Motor Accident Claim Petition No. 468 of 2000 whereby, the application preferred u/s. 163-A of the Motor Vehicles Act, 1988 (for short, "the Act") was partly allowed.

2. The original claimants had filed the aforesaid Motor Accident Claims Petition claiming compensation on account of death of one Haroon Alias Ibrahim Lohar while working as driver of truck no. GJ-12-V-5307 on 26.06.2002. The said application came to be partly allowed by the Tribunal and the opponents were held jointly and severally liable to pay an amount of Rs. 4,17,500/- by way of compensation along wit interest @ 9 per cent per annum. Being aggrieved by the same, the appellant - Insurance Company has approached this Court by way of this appeal.

3. Mr. Nanavati, learned Advocate appearing on behalf of appellant - Insurance

Company submitted that the claim petition preferred by the claimants u/s. 163-A of the M.V. Act is subject to the provisions contained in the Second Schedule appended thereto. Learned Advocate for the appellant - Insurance Company has submitted that while awarding compensation u/s. 163-A of the M.V. Act, the Tribunal ought not to have entertained the claim application u/s 163-A when the claimants themselves have claimed that the income of the deceased was more than Rs. 40,000/- which is the statutory limit.

3.1 Mr. Nanvati has relied upon a decision in the case of Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, and more particularly, on the observations made in Paras 42 & 67 of the said decision, which reads as under;

42. Section 163-A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs. 40,000/- having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other facts relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining herself had he been alive. This together with the other heads of compensation as contained in columns 2 to 6 thereof leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle.

67. We, therefore, are of the opinion that Kodala has correctly been decided. However, we do not agree with the findings in Kodala that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000/- per annum shall be treated as a cap. In our opinion, the proceeding u/s 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is up to Rs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.

4. Mr. Shah, learned Advocate for the claimants supported the award of the Tribunal and submitted that the Tribunal was completely justified in passing the impugned award. He, however, could not dispute the factum that the claimants themselves have claimed that the deceased was earning Rs. 5500/- per month.

5. Heard Learned Counsel for the parties and perused the documents on record. It is not in dispute that the deceased expired on account of the severe bodily

injuries sustained by him. On a plain reading of the Section 163-A, it is very clear that it provides for special provisions as to the payment of compensation on a structured-formula basis. The legislative intent behind the enactment of the said Section was to provide for the making of an award consisting of a predetermined sum, without insisting on a long-drawn-out trial or without proof of negligence in causing the accident. The said Section is subject to the Second Schedule appended thereto and provides for the grant of immediate relief to a section of the people whose annual income is not more than Rs. 40,000/-.

5.1. In the case on hand, evidently, the claimants themselves have claimed that the annual income of the victim is beyond Rs. 40,000/- per annum which is evident from para 33 of the judgement and therefore they cannot claim advantage of Section 163-A application.

6. At this stage, it would be relevant to refer to a decision of the High Court of Karnataka in the case of Oriental Insurance Co. Ltd. Vs. N. Kunhappu and Others, wherein it has been held that where the claimants'' evidence show annual income of more than Rs. 40,000/-, then the case may be remitted back for fresh adjudication u/s 166 of the Act.

7. In the present case, on perusal of the evidence on record, in the interest of justice, it would be appropriate to remand the matter to the Tribunal concerned for adjudication afresh. In view of the above discussion and keeping in mind the principle laid down in Oriental Insurance Company Ltd., & Deepal Girishbhai Soni''s cases (supra), I have no hesitation to hold that the judgment and award of the Tribunal is contrary to law and is liable to set aside and the matter is required to be adjudicated afresh u/s 166 of the Act.

8 In the result, the appeal is partly allowed and the following order is passed:

i. The impugned judgment and award is quashed and set aside.

ii. The matter is remanded to the concerned Motor Accident Claims Tribunal for adjudication afresh u/s 166 of the Act.

iii. this Court has passed the aforesaid order in view of the fact that the Tribunal has not followed the procedure established by law and therefore the Tribunal may not be influenced by the order of this Court.

iv. The amount invested in Fixed Deposit, as directed by this Court, shall be continued in Fixed Deposit and the claimants shall be entitled for the periodical interest on the said Deposit only up to the date of this judgment and order.

v. It is,however, made clear that interest accruing on the said Fixed Deposit shall be accumulated and will be adjusted at the time of the final award.

vi. The amount awarded & already withdrawn by the claimant, pursuant to the impugned award, will be adjusted at the time of the final award.

vii. Since the matter is pending since long, the Tribunal is directed to dispose of the case as expeditiously as possible and in any case not later than two years from the date of receipt of the writ of this Court.

viii. It is observed that this Court has not entered into the merits of the matter and the Tribunal shall consider the same afresh, without being influenced by the fact that this Court has quashed its earlier judgment and award.

ix. R& P, if lying with this Court, to be sent to the Tribunal forthwith.

