(2014) 01 BOM CK 0048

In the Bombay High Court

Case No : F.A. No. 12 of 2012

New India Assurance Co. Ltd. APPELLANT

Vs

Prasanna RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 163A, 166

Citation : (2014) 2 ACC 776 : (2015) ACJ 1340 : (2014) 5 ALLMR 257

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : Dhananjay P. Deshpande, Advocate for the Appellant

Final Decision : Allowed

Judgement

K.U. Chandiwal, J.—Heard Mr. Deshpande for the appellant. Notices were issued on 12th January, 2012, informing that the appeal could be decided finally at the stage of admission. There was no response to the notices. Consequently, Civil Application was moved for paper publication which was allowed on 26th February, 2012. In spite of such publication of notice, no participation from respondents.

2. Heard. Considering issue involved and since record is available, the appeal is heard finally in absence of respondents (original claimants).

3. The appellant Insurance Company questions award dated 18th October, 2011 recorded by the learned Ad hoc District Judge and Ex Officio Member, Motor Accident Claims Tribunal, Nanded, in MACP No. 523/2001 thereby awarding an amount of Rs. 2,65,000 with interest at the rate of 6.5 per cent per annum from the date of registration of the application till payment.

4. Deceased Dhirendra was proceeding towards Kalambar (Bk.) on his motorcycle on 30th March, 2001. However, in order to avoid offending obstacle, he took his motorcycle to extreme side of the road and, resultantly fell, suffered grievous hurt and, subsequently, succumbed. His legal representatives have

preferred application u/s 163A of the Motor Vehicles Act for grant of compensation of Rs. 5,00,000 (Rs. five lacs).

5. From the available record, it is not in question about death of the deceased, the spot Panchnama at Exh. 27, the inquest at Exh. 28, the insurance policy at Exh. 32. The learned Judge considered income of the deceased, dependency and directed afore referred compensation. The grievance of the appellant Insurance Company is:

(a) Section 163A of Motor Vehicles Act cannot be allowed to be put in acceleration by legal representatives of owner of vehicle when owner was involved in the accident.

(b) The insurance policy was applicable to third party and not to the owner of the vehicle.

Without further pondering upon the facts and adverting to its discussion, it is necessary to refer to the legal position to which Mr. Deshpande gave reference which is crystallized by the Apex Court in the matter of Oriental Insurance Co. Ltd. Vs. Rajni Devi and Others, In the said case, the Apex Court has dealt with effect and impetus of Section 163A, which are special provisions, as to payment of compensation on structured formula basis and the regular objections u/s 166 of M.V. Act. The Apex Court also referred to earlier judgments reported in Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha and Others, and Dhanraj Vs. New India Assurance Co. Ltd. and Another, The sum and substance of all these three judgments is, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party carried in the vehicle. However, effect of Section 147 of Motor Vehicles Act does not provide a leverage of insurance to owner of the vehicle in case of his death or bodily injury.

6. The deceased was, allegedly, drawing salary of Rs. 18,000 a month while serving in Zilla Parishad as a Medical Officer. The learned Judge has reduced the annual income to the ceiling of Rs. 40,000 to bring the case in terms of Section 163A which is not permissible under the Scheme. It is well recognized, the Motor Vehicles Act is a beneficial legislation and deserves liberal construction with a view to implement the legislative intent. However, it should not be twisted in such a manner to squeeze the provisions. The Scheme u/s 163A of the Motor Vehicles Act has special effect and requires to consider the legislative intention.

In the light of this position, the proceedings u/s 163A being a social security provision, providing for distinct scheme, only those whose annual income is up to a ceiling of Rs. 40,000 would be permissible to take benefit thereof. However, other claims will have to be dealt with in terms of Section 166 of the Motor Vehicles Act. Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, Conspectus of above facts illustrate, the learned Member, in spite of having pointed the legal position, did not consider the same and, hence, the order impugned calls for interference. It is accordingly set aside. The statutory amount and the compensation deposited by the Insurance Company in this Court be reimbursed with accrued interest to it after 12th March, 2014.

Appeal allowed, no costs.

