

(2013) 08 BOM CK 0149
In the Bombay High Court
Case No : First Appeal No. 554 of 2013

Reliance General Insurance Co. Ltd.

APPELLANT

Vs

Satish Bhaidas Patil, Mrs. Pushpa Satish Patil and
Bhanwarsingh B. Rathore

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 104, 140, 163, 163A, 163A(3)

Citation : (2014) 1 ALLMR 145 : (2013) 5 MhLj 796

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : D.R. Mahadik holding for S.R. Singh, for the Appellant; A.M. Gokhale, Advocate for R. Nos. 1 and 2 and Ms. Tanu Khattri, Advocate for R. No. 3, for the Respondent

Final Decision : Disposed Off

Judgement

A.P. Bhangale, J.—Heard submissions at the bar after the appeal is taken up for hearing, by consent. The appeal is directed against the oral judgment and award dated 23/6/2011 decided by the learned Member, MACT, Kalyan, whereby the learned Member awarded sum of Rs. 3,22,000/- to the respondents (claimants) in claim application preferred u/s. 163A of the Motor Vehicles Act, holding appellant and owner of the offending motor vehicle jeep no. MH-04-/DB/8243 jointly and severally liable to pay compensation in the sum of Rs. 3,22,000/- along with interest @ 7.5% per annum from the date of filing of the application.

2. The facts briefly mentioned are as under:

On 31/12/2007 at about 9 p.m. victim Ajit Satish Patil, aged about 20 years, accompanied with his friend, was driving his motorcycle bearing registration No. MH-4-AV-1800. At about 9.35 p.m. one jeep bearing registration No. MH-04-DB-8243 came from opposite direction in high and excessive speed, when motorcycle was near Cherpoli Ghat on Mumbai-Agra Highway Road, Shahapur. It had dashed the motorcycle, as a result the victim as well as pillion rider, who was

accompanying with the victim fell down. The victim had sustained serious injuries. He was taken to the hospital but succumbed to the injuries before admitting him in hospital. Thus on 3/1/2008 Crime No. I-3/2008 was reported against the driver of the Jeep - offending motor vehicle. Claimants - parents of victim preferred claim application u/s. 163A of the Motor Vehicles Act ("the said Act" for short) to claim compensation in the sum of Rs. 4,36,500/-. The appellant insurer had denied liability to pay compensation on the ground that Cherpoli Ghat is having various curves and runs zig-zag manner with heavy traffic in the Ghat. Under these circumstances, due to sharp curves, when motorcycle driven by deceased came in opposite direction, he was not in a position to control it and he fell down and injured. On behalf of the appellant it is contended that while the driver of the jeep had tried to avoid the accident by taking the jeep to the opposite side of the road, the jeep had turned turtle and fell in deep valley. It is not in dispute that jeep was covered under insurance contract, between the owner of the offending vehicle and the appellant. It is also not in dispute that the appellant did not produce any evidence, after filing of the written statement. While respondent No. 2 - Insurer did not lead any evidence and filed a praecipe accordingly opting for closing the evidence. Under these circumstances, looking in to the available evidence, the tribunal held that deceased Ajit Satish Patil died due to involvement of the jeep MH-04-DB-8243. Since the claim was u/s. 163A of the said Act, the tribunal had no difficulty to answer the issue as above, regarding cause of death of the victim which arose out of use of offending motor vehicle jeep No. MH-04-DB-8243. Regarding quantum of compensation, the tribunal took into account monthly income of the victim as Rs. 3,000/- per month and thus annual income in the sum of Rs. 36,000/- and applied multiplier of 13 to award compensation in the sum of Rs. 4,68,000/- only, out of which the amount of 1/3rd was deducted towards self expenses, which would have been incurred by the deceased, had he lived. Thus claimants were granted compensation in the sum of Rs. 3,12,000/- only. Apart from funeral expenses in the sum of Rs. 5,000/- and Rs. 5,000/- for loss of estate, together with interest @ 7.5% per annum.

3. It is the grievance of the learned advocate for the appellant that amount awarded by way of compensation is excessive because the claim was u/s. 163A of the said Act. He relied upon the ruling in National Insurance Co. Ltd. Vs. Gurumallamma and Another, , to argue that, the Supreme Court in para 8 observed that;

8 Multiplier *stricto sensu* is not applicable in the case of fatal accident. The multiplier would be applicable only in case of disability in non-fatal accidents as would appear from the serial No. 5 of the Second Schedule. Thus, even if the application of multiplier is ignored in the present case and the income of the deceased is taken to be Rs. 3,300 per month, the amount of compensation payable would be somewhat between Rs. 6,84,000 and Rs. 7,60,000. As the Second Schedule provides for a structured formula, the question of determination of judicial mind which is otherwise necessary for a proceeding

arising out of a claim petition filed u/s 166 would not arise. Tribunal in a proceeding u/s 163-A of the Act is required to determine the amount of compensation as specified in the Second Schedule. It is not required to apply the multiplier except in a case of injuries and disabilities.

4. The observation made by the Supreme Court in para 7 appears per incurium in the sense that title of the Second Schedule appears thus:

Schedule for compensation for third party fatal accidents/injury cases claims.

It also refers to general damages which includes funeral expenses, loss of consortium, loss of estate etc., in the case of death as clause serial No. 3 specify.

5. Thus where the Court omits to consider statutory provision or is ignoring the same while deciding the issue, such decision which may nullify express statutory provision would not have binding effect. The observations by the Apex Court appears to have been made due to inadvertence to provisions referred above, probably because the title of the Second Schedule and clause 3 may not have been pointed out.

6. The learned advocate on behalf of the respondents - claimants pointed out immediately, that in the ruling of Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, , three Judges" Bench of Hon"ble Supreme Court considered Section 163A along with Second Schedule specifically in the light of the other provisions of the Act and in para 51 it is concluded that "the scheme as envisaged u/s 163-A, in our opinion, leaves no manner of doubt, that by reason thereof the rights and obligations of the parties are to be determined finally" The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000 or less is covered thereunder whereas section 140 and 166 cater to all sections of society.

7. The Apex Court also considered that, "although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent". Thus construed Section 163A, which starts that non obstante clause exempted claimants from proving negligence on the part of the driver of the motor vehicle and also even assuming that victim was negligent, Section 163 operates as an exception to Section 166 in the interest of social justice, like Section 104 of the same Act.

8. This court also in National Insurance Company Limited Vs. Vishnu Motiram Maske, Labour and Education and Abdul Majid Haji Sadique Dosani (Owner of Tata Spacio), , had an occasion to consider identical case in the claim application preferred u/s. 163A to hold insurance company liable to pay compensation. Section 163-A enable claimants to receive compensation even in the absence of pleading and proof regarding wrongful act or neglect or default on the part of the

owner of the vehicle or any other person and even if the victim was at fault.

Section 163-A reads thus:-

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 of the authorised insurer shall be liable to pay in the case of death - (emphasis mine) 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.

(2) In any claim for compensation under sub-section (I) 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 other person.

Special provision has been provided to award compensation to third party victims of the accident. Victims or claimants u/s 163-A are exempted from proving negligence or tortuous act on the part of driver or owner of the offending motor vehicle. The submission on behalf of the appellant that section 163-A is applicable to injury claim cases and not to death claim cases is contrary to the express intention of the legislature in Section 163-A and second schedule relevant thereto in the Act. Regarding the contention that compensation is excessive, this court also considered the exemption u/s. 163A to the claimant not being required to plead and establish wrongful act, neglect or default of owner or any other person. Owner of the motor vehicle or the insurer concerned are liable to pay adequate and rational compensation for death or permanent disablement, arising from motor vehicle accident.

9. Second schedule of the Act has been adjudged as suffering from mistakes. It provides chart for those whose income would not exceed more than Rs. 40,000/- per annum and therefore total reliance cannot be placed upon it. It is true that, in claim application u/s 163-A, deviation from the structured formula in the Second Schedule with reference to Section 163A is not ordinarily permissible, but considering that the Second Schedule in the Act was inserted by Act 54 of 1994 with effect from 14/11/1994, the increasing prices of the daily need articles, food, clothing, shelter etc., and inflation cannot be ignored by a Tribunal or the court. Particularly considering that u/s. 163A statutory obligation is cast upon Central Government, in view of Section 163A(3) that the Central Government may keep in view the cost of living by notification in the official gazette from time to time, amend the Second Schedule. Although this may not have been done by

the Central Government, the Tribunal or court cannot remain like helpless spectator and ignore ground reality in relative value of sum of Rs. 15,000 in 1994 and the current value of rupee, when claims is decided. The Tribunal is bound to award just compensation provided that claimants with awareness brings it to the notice of the tribunal or the court, the evidence in this regard to claim just, fair and equitable compensation, which either the tribunal or the court would award when evidence is brought to its notice. Multipliers indicated in Pre-determined structured formula in second schedule is not hard and fast rule to bind the Tribunal but it does provide guideline for the court or the Tribunal to calculate, compute and award just, fair and equitable compensation. Be that as it may, in the present proceeding there is no cross objection nor any evidence is brought on record on behalf of the claimants for to get enhanced compensation, than already awarded by the impugned award claimants can not remain dormant over their rights. No submission is advanced on behalf of the claimant-respondent for to get the compensation enhanced on the ground of its inadequacy or otherwise.

10. For the above reasons, in my opinion, in the facts and circumstances of the case, no interference is called for with the impugned judgment and award. The compensation awarded cannot be labeled as "excessive or unreasonable". For the aforesaid reasons, therefore, no merit is found in the appeal. The appeal is dismissed. No order as to costs.

11. The amount, if any, deposited in this court be transferred to the Tribunal for execution of the award or for refund to the insurer, if it is so permissible. In view of the above, the civil application No. 1301 of 2012, would not survive and is disposed of.