
(2012) 03 DEL CK 0571
In the Delhi High Court
Case No : CM. (M) . 1405 of 2011

Smt. Gaytri and Others

APPELLANT

Vs

Sh. Amir Singh and Others

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 166

Citation : (2013) ACJ 2870

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Anshuman Bal, for the Appellant; Pankaj Seth, Advocate for R-3, for the Respondent

Final Decision : Allowed

Judgement

G. P. Mittal, J.—The Petitioners are aggrieved by an order dated 10.10.2011, whereby the Petitioners' application for converting a petition under Sections 166 and 140 of the Motor Vehicles Act (hereinafter referred to as "the Act") to one u/s 163-A of the Act, was dismissed on the ground that in the original claim petition the Petitioners claimed the deceased's income to be Rs. 9,000/- per month, which is now claimed to be Rs. 40,000/- per annum. The Claims Tribunal opined that in the absence of any reason for this reduction, the same cannot be accepted. Consequently, it dismissed the application. It may be mentioned that while claiming compensation a person having more income than Rs. 40,000/- can avail Section 163-A of the Act by restricting his income to Rs. 40,000/- per annum. Otherwise also, falsity or truthness of the averments made is not to be seen at the time of allowing the amendment or conversion of a petition from u/s 166 of the Act to the one u/s 163-A of the Act.

2. The question of conversion of a Petition u/s 163-A of the Act into one u/s 166 of the Act came up before the Bombay High Court (Aurangabad Bench) in New India Assurance Co. Ltd. Vs. Ashabai Kalyan Kothi and Others, , where it was held as under:-

15. The Tribunal as well as this Court always has a power to allow the conversion of a claim petition u/s 163-A into a claim petition u/s 166 of the said Act. The procedure is always a handmaid of justice. We are dealing with a beneficial legislation which provides for payment of compensation to the legal representatives of the victims of an accident involving a motor vehicle. The power of the Tribunal or this Court to allow conversion of the claim petition is discretionary. While exercising the discretion of allowing conversion, no doubt, the conduct of the claimants will be relevant. In a given cases, such as the case before the Division Bench in the case of New India Assurance Company Limited v. Rukhminibai Ashok Gore, FA No. 1349 of 2004; decided on 2.3.2007, the Court can refuse to exercise the discretion. In the present case, the conduct of the claimants is not such that the discretion should not be exercised in their favour. The claim petition was filed through an Advocate after setting out a specific case that income of the deceased was Rs. 4000/- p.m. The said stand was reiterated by the first respondent No.1 in the Affidavit in lieu of examination-in-chief. It cannot be said that the action of invoking Section 163-A was deliberate. The claimants have obviously acted as per legal advice. In my view this is a case where the claim petition u/s 163-A should be allowed to be converted into a petition u/s 166 of the said Act.

3. This Court in the case of Rukmani Devi Vs. New India Assurance Co. Ltd. and Another, held that the provision for award of compensation under the Motor Vehicles Act is a beneficial piece of legislation and, therefore, an endeavor has to be made to see as to how best the intention of legislation can be achieved so as to safeguard the interest of the victims of the accident. In para 14 it was held as under:-

14. Another question which is of the vital importance is whether the petition filed u/s 166 of the Motor Vehicles Act or visa-versa can be allowed to be converted into a petition u/s 163-A of the Motor Vehicles Act and if the answer is yes, then what should be the stage for allowing such a petition. There cannot be any dispute that Motor Vehicles Act is a beneficial piece of legislation and therefore, endeavour has to be as to how best the intention of the legislation can be achieved so as to safeguard the interest of the victims of the accident rather than defeating the same. The statute has to be construed according to the intent of the makers and it is the duty of the courts to interpret the statute to see that true intention of legislature is achieved. Taking a purposive interpretation of Section 163-A of the Motor Vehicles Act the clear intendment of the legislation was to come to the rescue of all those who in the absence of an evidence are not in a position to file a claim petition u/s 166 of the Motor Vehicles Act where death of the victim or permanent disablement of the victim is required to be proved by establishing the factum of negligence involving the offending vehicle resulting in to causing the accident but u/s 163-A, the requirement of proving the negligence has been dispensed with.

4. The Claims Tribunal fell into error in declining the application for conversion.

The impugned order is liable to be set aside.

5. The Petition is accordingly allowed. The parties are directed to appear before the Claims Tribunal on 21st May, 2012, which is the date fixed in the petition.