(2013) 11 CHH CK 0023

In the Chhattisgarh High Court

Case No : Civil Revision No. 13 of 2013

Smt. Pramila and Others APPELLANT

Vs

New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2013) 11 CHH CK 0023

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : D.K. Swain, for the Appellant; G.V.K. Rao, for the Respondent

Final Decision : Disposed Off

Judgement

P. Sam Koshy, J.—By way of instant civil revision, the applicant had challenged the order dated 8.10.12 passed by Motor Accident Claims Tribunal, Bilaspur (henceforth the ''Tribunal'') in Ex. C.T. No. 21/94. Vide the said order, the court below had rejected the objection raised by the applicants in respect of the calculation of the compensation amount and the deduction of income tax from the compensation payable to the applicants/claimants. The facts leading to the instant case are that the applicants/claimants have filed a claim case before the Tribunal in respect of an accident that took place on 4.12.92 in which the deceased was Harsha Kumar Baral. The applicants/claimants are the wife, two children and parents of the deceased. The Tribunal vide its award dated 6.3.98 awarded compensation of Rs. 2,36,000 along with interest @ 15% from the date of application i.e. 28.10.93 being the date of filing the claim application before the Tribunal.

2. The respondent/Insurance Company had filed an appeal before the High Court which was registered as MA No. 840/98. The said MA filed by the Insurance Company challenging the award of the Tribunal was dismissed vide order dated 23.4.10.

3. As per the award passed by the Tribunal, the amount to be distributed

between the claimants was that the wife would get an amount of Rs. 1 lac, the two children would get an amount of Rs. 50,000 each and the parents of the deceased would get an amount of Rs. 18,400 each.

4. When the appeal had been preferred by the Insurance Company, the mandatory requirement of payment of Rs. 25,000 was required to be made at the time of filing of the appeal which was deposited by the Insurance Company on 8.5.1998. Subsequently, when the appeal was being heard on admission, the High Court admitted the appeal of the Insurance Company subject to the condition of payment of Rs. 2 lacs to the claimants which was also paid by the Insurance Company on 7.12.98. As such Rs. 2,25,000 was in all paid by the Insurance Company by the time the appeal was finally decided on 24.4.10.

5. Subsequent to the decision of the High Court, the balance amount was also deposited by the Insurance Company before the Tribunal. However, while depositing, the Insurance Company deducted an amount of Rs. 62,435 towards income tax by way TDS, balance amount was deposited in the Tribunal which was disbursed to the claimants. It is at this juncture, the applicants/claimants had filed the objection in respect of 2 points firstly, in respect of the calculation of the compensation and secondly, in respect of deduction of income tax by way of TDS. The objection of the applicants/claimants was finally rejected by the court below vide its order dated 8.10.12 which is now under challenge in the instant civil revision.

6. On perusal of the order passed by the lower court as well as on perusal of the mode of payment made by the Insurance Company, it is reflected that the Insurance Company has in fact calculated the interest in 3 phases, firstly interest was calculated for the entire awarded amount from the date of application till 7.5.98 that was the date on which the Insurance Company for the first time deposited an amount of Rs. 25,000 as a condition precedent and the amount which is to be deposited as per the statutes for the purpose of filing of the appeal challenging the award. Subsequently, the Insurance Company deducted this amount of Rs. 25,000 from the principal amount and calculated the interest for the balance amount from 8.5.98 to 7.12.98 i.e. the date when on admission of the appeal, the High Court directed for payment of Rs. 2 lacs as a condition towards admission of the appeal and lastly the interest was calculated for the 3rd phase from 8.12.98 to 7.12.10 i.e. the date on which the appeal was finally decided by the High Court. For these 3 phases of period, interest has been separately calculated on the diminishing value of the principal amount to be paid to the claimants and thereafter deduction of income tax by way of TDS, the balance amount has been paid by the Insurance Company.

7. The 1st contention of counsel for applicants is that the mode of payment calculated by the Insurance Company is incorrect, for the reason that the Insurance Company should have made the calculation of the principal amount and the interest first and subsequently these amounts which have been periodically released i.e. initially an amount of Rs. 25,000 and subsequently an

amount of Rs. 2 lacs should have been deducted from the interest payable and then, the principal amount should have been arrived at. Counsel for the applicants relied upon the decision rendered by the Division Bench of Kerala High Court in the matter of Oriental Insurance Co. Ltd. Vs. Nirmala, wherein it has been held in paragraph-11 that the amount deposited as a condition precedent for filing an appeal cannot be deducted from the total amount of compensation for the purpose of calculating interest and the Insurance Company shall be liable to pay interest on the total amount awarded ignoring the amount of statutory deposit. With all due respect of the decision of the Division Bench of the Kerala High Court, for the facts of the instant case, the ration laid therein will not apply in the instant case. It would be clear that the Insurance Company has in fact calculated the interest on the principal amount as it stood firstly on 8.5.98 that was the date when they deposited 25,000/- towards the statutory requirements as the condition precedent to file an appeal and subsequently after deducting this 25,000/-, the balance amount was taken into consideration for the purpose of calculating interest till the date i.e. on 7.12.98 when the High Court admitted the appeal only on a condition of payment of Rs. 2 lacs to the claimants and lastly, the interest was calculated on the amount which was left over after the payment of Rs. 2,25,000 to the claimants. It is also to be borne in mind that admittedly the applicants in the instant case have received an amount of Rs. 25,000/- on 8.5.98 and a further amount of Rs. 2 lacs on 7.12.98 and the said amount of Rs. 2,25,000 was in the hands of the applicants/claimants who in turn were using the same and in fact if the said amount had been invested in the Bank, the applicants/claimants also would have obtained interest on the said amount and in the course, no loss would have been sustained, if any, towards wrong calculation of interest on this amount while making the final payment by the Insurance Company and for the said reason alone, the judgment of Kerala High Court would be distinguishable.

8. However, there appears to be some force in the 2nd point of arguments put forth by counsel for the applicants i.e. the action on the part of the Insurance Company in deducting the amount of Rs. 62,435/- towards payment of income tax by way of TDS at the rate of 20%. Counsel for the non-applicant has placed a document before the court whereby guidelines have been issued by the Insurance Company''s head office in respect of deduction of income tax. In the said circular, it is evidently clear that the income tax has to be deducted only if the interest amount payable exceeds 50,000/- to each claimant then TDS has to be deducted from the total interest amount at the rate applicable under the provision of law. Similarly, deduction of TDS @ 20% also can only be done if the claimants failed to produce before the Tribunal/Insurance Company their Pan card number while the payment being made by the Insurance Company. For the said reason also, the tax deducted at the rate of 20% is per se illegal and contrary as the Insurance Company had never ever sought for the production of the PAN card of the claimants, therefore they could not have deducted income tax @ 20%.

9. On plain reading of the guidelines issued by the respondent/Insurance Company, it is evidently clear that the Insurance Company ought to have first bifurcated the entire awarded amount between the claimants which in the instant case is 1 lac to the wife, 50,000 each to the two children and 18,400 to the parents. From the said individual amount, if the interest calculated is more than 50,000/- payable to each of the claimants, only then, the income tax could have been deducted. In the instant case, admittedly, it is not the case of the Insurance Company that the interest amount payable to each individual exceeds 50,000/- and therefore, they had wrongly deducted the income tax by way of TDS. For the said reason, the deduction of income tax made by the Insurance Company in the instant case appears to be not proper, illegal and contrary to their own guidelines.

10. In view of above, the instant civil revision is partly allowed. As regards 1st contention of the applicant i.e. calculation of interest not having been done properly is decided against the applicants as the applicants/claimants do not appear to have been put to loss by way of calculation made by the Insurance Company. However, as regards 2nd contention, the revision is allowed and the matter is remanded back to the Executing Court with a direction to proceed further with the Execution case to the extent that the Insurance Company should ensure the amount deducted by way of income tax should be paid to the claimants at the earliest preferably within a period of 30 days from the date of the receipt of the order failing which the said amount shall also carry interest @ 15% from the date the said amount fell due till the date of realization. In the light of observation made above, the instant civil revision is accordingly disposed of. No order as to costs.