(2013) 09 BOM CK 0240

In the Bombay High Court

Case No : First Appeal No. 657 of 2013 with Civil Application No. 2125 of 2013

The New India Assurance — APPELLANT

Vs

Dineshchandra Shantilal Shah and Others — RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2013) 09 BOM CK 0240

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

Bench : Single Bench

Advocate : Devendranath S. Joshi, for the Appellant; Sumit Raghani instructed by M/s. PDS and Associates, Advocates for R. No. 1, for the Respondent

Final Decision : Disposed Off

Judgement

A.P. Bhangale, J.—Heard submissions at the bar. The appeal was directed against the judgment and award dated 27/11/2012 passed by Learned Member of the Motor Accident Claims Tribunal, Mumbai in M.A.C.P. No. 1751 of 2003 whereby the appellant insurance company was directed to pay compensation in the sum of Rs. 5,14,286/- inclusive of the reimbursement amount granted under Mediclaim Policy to the claimant. The award also carried interest @ 7.50% per annum from the date of application till realisation of the amount, as owner and insurer were jointly and severally held liable to pay sum of Rs. 14,91,604/- inclusive of no fault liability amount.

2. The grievance of the appellant-insurance company is that the amount which was got reimbursed by the claimant under mediclaim policy could not have been awarded in favour of the claimant because the insurance company and the owner of the offending motor vehicle could not have been compelled to pay the amount again which was already reimbursed under mediclaim policy to the claimant. In support of this submission learned advocate for the appellant placed reliance upon ruling in National Insurance Co. Ltd. v. R.K. Jain & Ors. decided by MAC Appeal No. 346 of 2010 and 279 of 2011 decided by Delhi High Court on 2/7/2012. Delhi High Court had considered number of judicial precedents

including ruling in Uttaranchal Road Transport Corporation & Ors. v. Mansaram Nainwal, reported in AIR 2006 SC 2840. Ruling in State of Haryana and Another Vs. Jasbir Kaur and Others, was also considered, which mentions the rule of awarding compensation that it must be a just and it cannot be a bonanza, not a source of profit at the same time it should not be a pittance. Thus the Hon''ble Supreme Court observed that the courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation which should be just. What could be a just compensation is a vexed question and there can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations as the just and fair compensation would depend upon the particular facts and circumstances as also attending peculiar or special features, if any, in the case. Suffice it to say that compensation amount award has to be just, fair and equitable and not a jackpot or lottery for the claimant.

3. Delhi High Court had concluded in para 16 of the ruling in National Insurance Co. Ltd. v. R.K. Jain as below (para 16). Thus on the basis of ratio of the Helen C. Rebello (supra) and Patricia Jean Mahajan (supra) it can be safely concluded that only those amounts which are payable to the claimant/claimants by reason of death or injury in an accident are only liable to be deducted.

4. Reference was made to Division Bench ruling in Jitendra Jain Vs. Rahul Parihar and Others, wherein it was held following Patricia Jean Mahajan''s case that claimant was not entitled to the amount received by him under mediclaim policy although he may be entitled to the amount of premium paid for the mediclaim policy. Thus any amount which is received by the claimant on account of accidental injury under mediclaim policy is liable to be deducted from the total compensation amount awarded u/s. 166 of the Motor Vehicle Act, except amount of premium paid by the claimant for to avail of mediclaim policy.

5. Learned advocate representing the respondent-claimant under instructions from the claimant submitted that at the time of the accident, the claimant was in service with Balsara Hygiene Products Ltd. which was later merged in Dabar India Ltd. Therefore, for claimant it is now difficult to lay his hands on the record of premiums but he had spent sum of Rs. 25,000/- for availing of mediclaim policy. This amount, according to the learned advocate for the respondent, is reasonable and about it the learned advocate for the appellant has no dispute, not to deduct this amount of Rs. 25,000/- from the amount of compensation awarded by the Tribunal but the amount received under the mediclaim policy by the claimant cannot be paid over again and it is liable to be deducted from the award amount.

6. Therefore, in view of these submissions it has to be concluded that the tribunal is entitled to deduct the amount already paid to the claimant under mediclaim policy excluding the amount of Rs. 25,000/- paid towards premium.

7. The appeal is partly allowed accordingly.

8. The impugned judgment and award is modified thus;

The appellant insurance company and the owner of the offending motor vehicle shall be jointly and severally liable to pay award amount minus the amount received by the claimant under mediclaim insurance policy (excluding the amount of Rs. 25,000/- paid towards premium by the claimant). The amount payable would carry interest @ 7.5% per annum from the date of the application till realisation. The calculations for award be made accordingly.

The amount deposited in this court be transferred to the tribunal and tribunal shall act upon authenticated copy of this order.

After award amount is paid along with interest accordingly, the balance amount, if any be refunded to insurer company.

9. The appeal is disposed of. In view of the disposal of the appeal, civil application No. 2125 of 2013 also stands disposed of.

