

(2013) 08 BOM CK 0227
In the Bombay High Court
Case No : First Appeal No. 729 of 2010

The New India Assurance Co. Ltd.

APPELLANT

Vs

Padma, Renuka, Mangesh and Bhaskar

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2013) 6 ALLMR 151

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

Bench : Single Bench

Advocate : M.M. Sudame, for the Appellant; U.N. Vyas, Advocate for Respondent Nos. 1 to 3 and Shri R.B. Agrawal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—The appeal is directed against the judgment and award dated 19/03/2010 whereby learned Member, Motor Accident Claims Tribunal, Akola in M.A.C.P. No. 52 of 2007 awarded a sum of Rs. 4,15,000/- by way of compensation along with interest at the rate of 7.5% per annum from the date of the petition till realization directing the insurer to pay amount awarded and then to recover the same from owner/driver of the offending motor vehicle. Facts briefly stated are as under-

Victim Shivshankar Sahebrao Jambhulkar along with respondent No. 4 (owner) of the vehicle were riding on motorcycle bearing registration No. MH-30 S-5693. Victim was a pillion rider. Motor vehicle accident occurred on 27/03/2006 when motorcycle proceeding from Gandhigram and rider of the motorcycle lost his control and gave dash to a tree consequently pillion rider sustained injuries. He was admitted in hospital, but died on 08/04/2006 at the age of 32 years.

2. It appears that claim was u/s 163A of the Motor Vehicles Act, 1988 for compensation on the ground preferred by claimants dependents-widow and minor daughter and son of the victim. The claimants contended that deceased

Shivshankar was in service with Shri Gupta Grain Merchant, Akot, earning salary of Rs. 3,000/- per month and due to his untimely death, the dependents lost their only earning member of the family. Thus, the claimants had claimed a sum of Rs. 4,00,000/- as compensation together with interest.

3. The Tribunal after considering evidence led before it, the widow of the deceased namely Smt. Padma, who was also cross-examined before Tribunal in respect of the accident as also material in the form of Police papers on record. The learned Member of the Tribunal rightly noted that the claimants are not required to plead or prove wrongful act or neglect or default while application is made u/s 163A of the Act. On behalf of the claimants, four witnesses were also examined in order to prove income of the deceased as also his service with Gupta Grain Merchant shop and his monthly earnings. One Shyam Tarhale, who was accompanying with deceased deposed that he had accompanied with him while he was driving the vehicle and witness was sitting as a pillion rider when rider of the motorcycle lost control of the vehicle and gave dash to a tree about one kilometer ahead of Gandhigram. Witnesses also gave report of the accident to Dahihanda Police Station on the following day, claiming that he was pillion rider and deceased was driving the motorcycle. Thus, on the basis of evidence the Tribunal arrived at the conclusion that Shivshankar Jambhulkar was riding motorcycle bearing registration No. MH-30 S-5693 as a pillion rider and son of respondent No. 1 Shyam Tarhale was driving the motorcycle and also came to a conclusion that death of victim was caused by offending motorcycle No. MH-30 S-5693. It appears that Tribunal was guided by Second Schedule with reference to Section 163A of the Act which provides for statutory structures and formulae to determine just and reasonable compensation. Thus, on the basis of evidence before it, the Tribunal believed that victim was earning monthly sum of Rs. 3,000/- while he was aged 30 to 35 years on that basis his annual income was calculated in the sum of Rs. 36,000/- and appropriate multiplier of 17 is applied, granting compensation in the sum of Rs. 6,12,000/- and deducting 1/3rd amount which victim would have spent towards his personal expenses. Thus, compensation in the sum of Rs. 4,15,000/- was awarded inclusive of amount of Rs. 2,000/- as funeral expenses and loss of consortium granted in the sum of Rs. 5,000/-.

4. The contention of the learned Advocate on behalf of the appellant is that insurer is not liable to pay compensation awarded by the Tribunal as owner of the offending motor vehicle would be exclusively liable to pay compensation to pillion rider, who according to learned Advocate for the appellant cannot be considered as third party.

5. Be that as it may, since it was claim application u/s 163A of the Motor Vehicles Act, 1988 the compensation in such cases has to be determined on structural formula basis provided under Schedule-II with reference to Section 163A of the Motor Vehicles Act, 1988. The liability of the Insurance Company towards third party is in the nature of strict liability. Even assuming that there was no

negligence on the part of the owner/driver of the offending motor vehicle. Of course, if insurer can establish that owner of the offending motor vehicle was exclusively liable to pay compensation on account of breach of insurance policy, Insurance Company is entitled to recover the amount paid to third party from the owner/driver of the offending motor vehicle. This proceedings for recovery can be filed by mere filing of an application for execution and no separate suit is required to be filed to recover the amount from the owner/driver of the offending motor vehicle. The Tribunal while granting compensation has already observed that Insurance Company shall pay the sum awarded together with interest and is at liberty to recover from the owner/driver of the offending motor vehicle as observed in para-23 of the impugned judgment of the award. That being so, no ground is made out for interference in the impugned judgment and award. Hence, appeal stands dismissed.