IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3156 OF 2013

Oriental Insurance Company Ltd. .. Petitioner
V/s
Jacinta Sequira & Anr. .. Respondents

Mr. D.S. Joshi for the petitioner.
Ms. Varsha K. Chavan for respondent no.1.

CORAM: D.H. WAGHELA, CJ.

DATE : 29th JULY 2016

ORAL JUDGMENT.:

The petitioner – Insurance Company has filed the present petition mainly to call into question the order dated 14th February 2013 of the Motor Accident Claims Tribunal, Mumbai in Execution Application No. 218 of 2012 in M.A.C.T. Application No. 319 of 1992, whereby the sum of Rs.24,76,146/- was directed to be paid to the original claimant and the sum of Rs.1,00,000/- was directed to be deposited with the Income Tax Department towards TDS on the interest on compensation amount.

2. During the course of hearing, learned counsel appearing on either side have exchanged their own calculations of interest due on the principal amount of compensation awarded by the Claims

Tribunal and enhanced by the order of this Court. After the total amount of compensation was arrived at, the amount paid by way of interest to the respondent has also been calculated and the amount now remaining due, calculating the interest upto 30th July 2016, has been worked out. It is jointly submitted by learned counsel that the total amount now remaining due towards interest from the petitioner to the respondent comes to Rs.12,24,391/-. That amount is arrived at without prejudice to the contention of the petitioner that part of the earlier payments made to the respondent could have been adjusted against the principal amount of compensation and if the amount of interest were calculated on that basis, the amount remaining due would come to a lesser figure.

3. On the issue of deduction of TDS by the petitioner, the *order dated 17th December 2009 of the Division Bench of this Court in Civil Application No. 4923 of 2009 in First Appeal No. 1857 of 2009 (Mrs. Gauri Deepak Patel & Ors. v/s New India Assurance Co. Ltd. & Anr.)* has to be followed and complied with. It is directed in paragraph 6 of the the said order as under:-

> *"6. Accordingly, we direct that the following procedure as laid down in the case of Hansaguri (supra) shall be followed in the present case and in all the similar cases arising in future before the Motor Accidents Claims Tribunal:-*

(i) .....

(ii) ....

(iii) If the interest payable to any claimant during any particular financial year exceeds Rs.50,000/-, the Tribunal shall permit the insurance companies/owners to pay over the amount liable to be deducted at source under section 194-A(3)(ix) to the Income Tax Department in respect of that particular claimant for the particular year, without prejudice to the claimant's case that he is not liable to pay any income tax for that year."

4. Even as learned counsel for the respondent has sought to argue on the basis of the *judgment dated 2nd June 2016 of the Madras High Court in CRP (PD) No. 1343 of 2012* and the *judgment dated 13th September 2012 of the Allahabad High Court in Income Tax Appeal No. 441 of 2006* that the claim under the Motor Vehicles Act regarding compensation or death or injury is a statutory liability and the award of compensation could not be regarded as income. The arguments on this line could not be accepted in the face of the express direction issued by the Division Bench of this Court after adverting to the Division Bench judgment of Gujarat High Court in *Hansaguri Prafulchandra Ladhani & Ors. v/s Oriental Insurance Company & Ors., 2007 ACJ 1897,* which in turn relied upon the

decision of the Apex Court in *Rama Bai v/s Commissioner of Income Tax, AP, (1990) 181 ITR 400.*

5. Therefore, following the decision of this Court in *Mrs. Gauri Deepak Patel (supra),* the petition is partly allowed. Taking into consideration the payments admittedly made by the petitioner to the respondent, the amount towards interest finally remaining due as on 30th August 2016, i.e. Rs.12,24,391/-, is ordered to be paid by the petitioner to the respondent after the necessary Deduction of Tax at Source (TDS) in accordance with the provisions of section 194-A of the Income Tax Act, along with the principal amount of Rs.8,42,486/- which is admittedly remaining due. Such payment of the total amount of Rs.20,66,877/- shall be made by the petitioner on or before 30th August 2016 and any further delay will incur additional interest at the rate of 3% per annum till the date of payment. The calculation submitted by learned counsel is taken on record and marked "X".

6. The petition stands partly allowed and disposed accordingly with no order as to costs.

(CHIEF JUSTICE)