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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14468 OF 2018

Smt. Jayshree Dilip Salunkhe & Anr. ..Petitioners.

V/s.

Pradeep Narsing Malge & Anr. ..Respondents.

Mr.Sandeep Mishra with Prakash Mishra for the petitioners.

None for the respondents.

CORAM : M.S.SONAK, J.

DATE : APRIL 9, 2019

ORAL JUDGMENT

Heard Mr.Mishra, learned counsel for the petitioners.

2. On February 14, 2019, this Court has passed the following order :-

“ Not on Board. Mentioned. Taken on production board.

2. Await service of notice. Adjourned to 11.03.2019.

3. The petitioner is directed to serve the Respondents by private notice in addition to usual mode of service and file affidavit of service before the next date.

4. Ad-interim order operating till today to continue till 11.03.2019.

5. Parties are put to notice that the petition may be heard finally at the stage of admission.”

3. Thereafter, some was was spent for effecting service upon the respondents, including opportunity to the contesting respondent i.e. respondent No.2 Insurance Company. Learned counsel for the petitioners states that the service is complete and even the affidavit of service has been filed on record.

4. Rule. Rule made returnable forthwith taking into consideration the order made on February 14, 2019 in which the parties were put to notice that this petition will be heard finally at the stage of admission.

5. Challenge in this petition is to the order dated October 30, 2018 by which learned Member of Motor Accident Claim Tribunal ('MACT' for short) has dismissed the petitioners' application for amending and converting the claim application under section 163-A to section 166 of the Motor Vehicles Act ('the M.V.Act' for short).

6. Mr.Mishra, learned counsel for the petitioners points out that there can be no bar to permit such an amendment. He points out that the amendment was applied for, on the the basis of income tax returns produced by the Insurance Company itself pointing out that the annual income of the petitioner's deceased husband was Rs.80,000/- per annum. He points out that the petitioners who are widow and children of the deceased did not have a clear idea of income and were advised to file a petition under section 163(A) of the M.V. Act on the

basis that income was lessor. He relies on the decision of the Delhi High Court in the case of *United India Insurance Co. Ltd. V/s. Rita Devi & Ors.* [MAC App. 256/2007 decided on December 5, 2014] in support of his contention.

7. The insurance company which is the contesting party, though served, have not appeared in this proceedings.

8. The impugned order in the present case reads thus :-

“ This is an application filed for amending the claim application converting application U/s.163-A to Sec.166 of the M.V. Act for just and fair compensation. The Applicant has not submitted any reason for amending the claim. The case has been Part-Heard. The Applicant has already led the evidence. No substantial reason has been mentioned for converting the claim. Hence, for want of necessary details, the applications stands rejected. ”

9. According to me, the impugned order is unsustainable inasmuch as, the MACT has failed to appreciate the reasons stated on behalf of the petitioners. According to him, the reasons stated were to permit amendment / conversion.

10. In the case of *Rukmini Devi V/s. New India Assurance Co. Ltd. And Anr.*¹, the Delhi High Court in that context has made the following observations at paragraphs 7 and 9, which reads thus :-

“7. Based on the above discussion and after considering the ratio

¹ 2009 ACJ 2202

of the aforesaid judgment of the Apex Court, it becomes manifest that the bar is on taking simultaneous remedies under Section 163-A and Section 166 of the Motor Vehicles Act, but there cannot be any bar that the claimant cannot choose at any stage of the case to convert their petition from Section 166 to Section 163-A of the Motor Vehicles Act. Denying such right of conversion during the pendency of case would defeat the very social objective of granting speedy and expeditious compensation to the victims of the accident cases. Once the claimants have taken recourse to Section 163-A of the Motor Vehicles Act the only hindrance which will come in the way of the claimants would be that the compensation in their favour would be payable under the said structured formula of the Motor Vehicles Act and once the claimants seek an amendment to convert their petition from Section 166 to Section 163-A of the Motor Vehicles Act, then, at the same time the claimant cannot be allowed to take the advantage of the income which the deceased/victim might have been earning over and above the amount of Rs. 40,000 per annum as restricted in the Second Schedule to the Motor Vehicles Act.

9. *Another question which is of vital importance is whether the petition filed under Section 166 of the Motor Vehicles Act can be allowed to be converted into a petition under Section 163-A of the Motor Vehicles Act or vice versa and if the answer is yes, then what should be the stage for allowing such a petition. There cannot be any dispute that the 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 any evidence are not in a position to file a claim petition under Section 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 into causing the accident but under section 163-A, the requirement of proving the negligence has been dispensed with.”

11. Besides, the Supreme Court in the case of *Nagappa V/s. Gurdayal Singh and Ors*² has made the following observations which are also relevant in the context :-

“ Secondly, under Section 169 the Claims Tribunal in holding any inquiry under Section 168 is required to follow the rules that are made in this behalf and follow such summary procedure as it thinks fit. In the present case, it has been pointed out that Rule 253 of Karnataka Motor Vehicles Rules, 1989 empowers the Claims Tribunal to exercise all or any of the powers vested in a Civil Court under the provisions of Code of Civil Procedure, 1908. Rule 254 inter alia makes specific provision that Order 6 Rule 17 CPC is applicable to such proceedings. In this view of the matter, in an appropriate case, depending upon the facts and the evidence which has been brought on record and in the interest of justice, Court may permit amendment of claim petition so as to award enhanced compensation. Further, for amendment of the pleadings, it is settled law that unless it causes injustice to other side or it is

2 (2003) 2 SCC 274

not necessary for the purpose of determining real issue between the parties, Court would grant amendment. It is also to be stated that under the M. V. Act there is no time limit prescribed for claiming compensation. Therefore, there is no question of enhanced claim being barred by limitation.”

12. The Delhi High Court in the case of *Rita Devi and others (supra)* has held that the provisions of Order 6 Rule 17 of the CPC may at any stage of the case allow either party to alter or amend the pleading in such manner or such terms, subject to, of-course certain limitations as provided under the amendment of 2002. The Court held that when a petition under section 166 of the M.V. Act is converted into 163A of the M.V. Act, it is like an amendment to the claim petition and for the purpose of adjudicating upon all the disputes, such an amendment cannot be said to be barred.

13. For all the aforesaid reasons and in the interest of justice, the impugned order is set aside and the petitioner 's application at Exhibit-36 in MACP No.2265/2012 seeking amendment for converting the application under section 163A to 166 of the M.V. Act is hereby allowed.

14. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

15. The interim order is hereby vacated and the parties to appear before the MACT on April 30, 2019 and file an authenticated

copy of this order. Based upon the same, the MACT to permit the petitioner to amend the application. The copy of the amended application be served upon the respondents, who then be given opportunity to file their response, if they so desire.

16. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)