IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.113 OF 2009

Prakash s/o Manik Borkar,
Aged about 30 years,
Occupation-Agriculturist,
R/o. Rithod, District-Washim. .. Appellant

.. Versus.

1. Sheshappa Punjasa Alamwar,
   Aged Major, Occ-Business,
   R/o. Shiv Chowk, Washim.
   (Owner of Truck No.MH37/B-223).

2. Branch Manager,
   The Oriental Insurance Company,
   Ltd., Washim. .. Respondents

....
Ms. Astha Sharma, Advocate for appellant,
Ms. Anita Mategaonkar, Advocate for respondent no.2.
....

CORAM: M.S. SONAK, J.
DATED: DECEMBER 10, 2021.

JUDGMENT

Heard Ms. Astha Sharma, the learned counsel for the appellant, and Ms. Anita Mategaonkar, the learned counsel for respondent no.2-Insurance Company.

2. This appeal challenges the judgment and award dated 10.12.2008, by which the Motor Accident Claims Tribunal, Washim (Tribunal) in M.A.C.P. No.210/2006 has dismissed the appellant’s claim under Section 163-A of the Motor Vehicles Act, on the ground that the annual income of the appellant exceeded Rs.40,000/-.

3. Ms. Sharma, the learned counsel for the appellant, pointed out that the appellant before the Tribunal itself had filed a pursis on 7.11.2008 (Exh.39) much before, the Tribunal could dispose of the matter seeking to reduce the monthly income from Rs.5,000/- to Rs.3,000/-. She submits that this pursis should have been treated as an application to amend the claim petition. She submits that the provisions relating to the award of compensation under the Motor Vehicles Act are social security provisions enacted by the legislature and they have to be liberally interpreted to promote this object.

4. Ms. Mategaonkar, the learned counsel for respondent no.2-Insurance Company, submits that the filing of the pursis was clearly an afterthought and therefore, the same was quite rightly rejected by the Tribunal. She submits that the Tribunal has relied upon the decision of this court in

Jawaharlal Mannalal Bagadiya .vs. Maharashtra State Road Transport Corporation and another, 2008 (b) ALL MR 346 and Gurmeet Singh .vs. Chandigarh Transport undertaking and others, 2008 ACT 2303 and therefore, the impugned award warrants no interference in this case.

5. Ms. Mategaonkar, without prejudice to the aforesaid, submitted that even relief is granted to the appellant at this stage, the same wound undoubtedly burden the insurance company with interest that is normally awarded from the date of filing of the claim petition, till the order of payment. She submits that for the fault on the part of the claimant, the insurance company cannot be made to face such an onerous claim. She submits that even otherwise on merits, the claim of the claimant before the Tribunal was not maintainable.

6. Having evaluated the rival contentions and perused the material on record, I think that some relief is due to the appellant, but at the same time, the appellant will have to be put to terms so that the respondents including the insurance company is not foisted with the interest liability for an extended period without any fault attributable to them.

7. There can be no dispute that the provision of Section 163-A of the Motor Vehicles Act can be invoked by the claimants only when the income is less than Rs.40,000/- per annum. The appellant initially pleaded that the income was Rs.5,000/- per month i.e. Rs.60,000/- per annum. Later on, but without too much delay, the appellant filed a pursis scaling down the income has Rs.3,000/- per month i.e. Rs.36,000/- per annum.

8. In my judgment, the pursis could have been taken as an application seeking leave to amend the claim and such amendment also could have been allowed. Ultimately, the provisions of Section 163-A of the Act provide for limited compensation in favor of the claimant as per the formula prescribed in the second schedule. No doubt, here the applicant is not required to prove the aspect of negligence. Since this is social security legislation, a liberal approach is warranted unless some malafides are demonstrated.

9. In this case, even assuming that the pursis was an afterthought, no mala-fides as such can be attributed to the appellant. Therefore, this is a fit case where the impugned award will have to be set aside and the matter remanded to the Tribunal for fresh consideration based on the

premise that the annual income was Rs.36,000/- per annum. Such a remand will enable all the parties to make good their respective versions.

10. There is considerable merit in the submission of Ms. Mategaonkar, the learned counsel for respondent no.2-insurance company on the aspect of interest. For the fault of the appellant, the respondent, including the insurance company, should not be made to face a potential claim for the payment of interest from the date of filing of the application, till the date of actual payment. None of the respondents, including in particular the insurance company, are in any manner responsible for this delay, and therefore, even if the appellant's claim is to be ultimately allowed, the appellant cannot be permitted to take advantage of his lapses or in any case, the respondent-insurance company cannot be foisted with an interest liability for no lapse attributable to it.

11. For the aforesaid reasons, this appeal is **partly allowed** by making the following order :

(a) The impugned award is set aside and the matter is remanded to the Tribunal at Washim for fresh adjudication in accord with the law.

(b) Fresh adjudication shall be under Section 163-A of the Motor Vehicles Act, taking the annual income at Rs.36,000/-;

(c) If the Tribunal concludes that any compensation is required to be awarded to the appellant, the Tribunal may do so, but the Tribunal shall not award any interest to the appellant for the period between 10.12.2008 and 10.12.2021.

(d) The Tribunal, however, shall be at liberty to award interest from the date of filing of the claim petition, till the date of the impugned award i.e. 10.12.2008, and thereafter for the period beyond the award.

(e) All contentions of all the parties on merits and the entitlements are left open for determination by the Tribunal.

(f) Parties to appear before the Tribunal on 10th January 2022 at 11.00 am and file an authenticated copy of this order.

(g) The Tribunal shall issue notices to such of the parties, who do not appear on the said date so that such parties have an opportunity to participate in the proceeding.

(h) The Tribunal shall endeavor to dispose of the remanded matter, as expeditiously as possible and in any case, within six months from the date the parties file authenticated copy of the order.

(i) There shall be no order for costs. All concerned to act on an authenticated copy of this order.

[M.S. Sonak, J.]

ABHIMANYU SHANKARRAO GULANDE

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