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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.553 OF 2020

ALONGWITH

CIVIL APPLICATION NO.3060 OF 2019

AND

CIVIL APPLICATION NO.2588 OF 2016

IN

FIRST APPEAL NO.553 OF 2020

The New India Assurance Co. Ltd.]
Through Centralized Motor TP Claims Hub] .. Appellant

vs.

Shri Santosh Bhaga Pachkude & Ors.] .. Respondents

Mr.D.S. Joshi for Appellant and for Applicant in CAF 2588/2016.

Mr.Rakesh Bhatkar a/w Mohit Dalvi for Applicant in CAF No.3060/2019 and for Respondent No.1 in CAF 2588/2016.

CORAM : N.R.BORKAR, J.

DATE : 3RD FEBRUARY 2022

P.C.

1] This appeal takes an exception to the Judgment and Award dated 09.12.2015 passed by the Motor Accident Claims Tribunal, Ratnagiri in M.A.C.P. No.3 of 2014.

2] The respondent Nos.1 and 2 herein had filed Claim Petition under Section 163A of Motor Vehicles Act, 1988 for compensation on account of death of their son Mr.Mangesh Santosh Pachkude in motor vehicle accident dated 25.09.2013. By the impugned Judgment and Award the learned Tribunal directed the respondent Nos.3 and 4 (driver and owner of the offending vehicle) and the present appellant (Insurer) to jointly and severally pay compensation of Rs.3,30,000/- with interest @ 7.50% per annum from the date of filing of the Claim Petition, till it's realization.

3] I have heard the learned counsel for the Appellant and learned counsel for Respondent Nos.1 and 2.

4] The learned counsel for the appellant submits that according to respondent Nos.1 and 2 the deceased was working as labourer and earning Rs.3,500/- per month. It is submitted that the Hon'ble Supreme Court in the case of ***Deepal Girishbhai Soni vs. United India Insurance Co. Ltd. reported in 2004 (5) SCC 385***, has held that the proceeding under Section 163-A being a social provision, providing for a distinct scheme, only those whose annual income is upto Rs.4000/- per annum can take the benefit thereof. It is submitted that the learned Tribunal, was, therefore, not justified in entertaining the Claim Petition filed by respondent Nos.1 and 2.

5] On the other hand, the learned counsel for respondent Nos.1 and 2 submits that, amendment application was moved to correct the income of the deceased, which was wrongly mentioned as Rs.3,500/- per month instead of Rs.3,000/- per month. It is submitted that amendment was allowed and no exception to it was taken. It is submitted that, thereafter, evidence was led and it was not suggested that the income of the deceased was more than Rs.3,000/- per month. It is submitted that the Tribunal was justified in entertaining the claim petition.

6] In absence of any evidence to show that the income of the deceased was more than Rs.40,000/- per annum, the submission of learned counsel for the Appellant that the Claim Petition was not maintainable under Section 163A of the Motor Vehicles Act, cannot be accepted.

7] The learned counsel for appellant further submits that the learned Tribunal erred in awarding Rs.10,000/- towards loss of estate and Rs. 14,000/- towards funeral expenses. It is submitted that this Court in the case of **National Insurance Co. Ltd. Vs. Chandrprabha reported in 2016 (4) ABR 750** has held that in a Petition under Section 163-A it would not be permissible for the tribunal to award the amount more than prescribed in the second schedule, which prescribes Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate.

8] The learned Tribunal has granted Rs.3,06,000/- towards pecuniary damages and Rs.24,000/- towards non-pecuniary damages i.e. Rs.10,000/- towards loss of estate and Rs.14,000/- towards funeral expenses. No exception is taken to the pecuniary damages awarded by the learned Tribunal. Admittedly, there is no statutory defense. I am, therefore, not inclined to entertain the present Appeal only against the non-pecuniary damages. The appeal is dismissed. In view of dismissal of the appeal the Civil Applications do not survive and the same are also disposed of.

[N.R.BORKAR, J]