IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 335 OF 2016

	The New India Assurance Co. Ltd. M.G.Road, Mumbai Through Mumbai Regional Office-I, New India Bhavan, 2nd Floor, 34/38, Bank Street, Fort, Mumbai-400023.	… Appellant (Org. Insurer)
	Versus	
1	Deepak Laloobhai Parmar Age 37 yrs, Occ.: Not known, R/at M.G.Kadam Chawl, Room No.2, C.S.T.Road, Santacruz (E), Mumbai-400090.	
2	Chandravadam Amritlal Panchal Age Adult, Occu. Not Known, Residing at Palsana, Taluka Pardi, District Valsad, State Gujarat	… Respondents (Resp.1 org. Claimant, Resp. 2 org. Opp. Party)

………

Mr. Devendranath S. Joshi a/w. Pradyumna Thakurdesai, Advocate for the Appellant.
Smt. Kalpana Trivedi i/b. Mr. Jitendra Gor, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.
DATE : 18th MARCH, 2024.

ORAL JUDGMENT :

1. The issues involved in this appeal are claim was filed after 9 years of the accident and the liability of the insurance company was restricted to Rs.15,000/- and interest is awarded for entire period.

2. It is contention of learned counsel for the appellant/Insurance Company that after the accident, claim petition was filed after 9 years of the accident, no application for condonation of delay was filed nor reasons were mentioned in the claim petition for delay in filing the claim petition. Learned counsel further submitted that the liability of the Insurance Company was restricted to Rs.15,000/- only but the Tribunal has not considered this fact. Learned counsel further submitted that during the pendency of the claim petition an application under Section 140 was dismissed for default. Thereafter, again the Claim Petition was dismissed under Section 166 of Motor Vehicles Act, 1988 (for short "M.V.Act") but the Tribunal while awarding compensation has not deducted interest for delayed period, which is erroneous. Hence requested to allow the appeal. He relied on ***Purohit and Company Vs. Khatoonbee and Anr.***[1].

3. It is contention of learned counsel for the respondent No.1/claimant that issue of delay for filing claim petition was not raised before the Tribunal. Learned counsel further submitted that the Tribunal has relied upon the judgment of Hon'ble Apex Court and on that basis the Tribunal has held that there is liability of the Insurance Company to pay the compensation though there was limited liability of Rs.15,000/- per passenger. She further submitted that the Tribunal has considered all the aspects while passing the judgment and order. No interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment

1 (2017) 4 SCC 783

and Order passed by the Motor Accident Claims Tribunal, Mumbai (for short "**the Tribunal**"). The issue of delay in filing the claim petition was not raised before the Tribunal, hence, I do not find merit in the said contention. Moreover, the Insurance Company has not disputed about the happening of the accident. It appears from the record that the claimant is Class-IV employee. The Hon'ble Apex Court in the case of ***Purohit & Co. (Supra)*** has observed that reasonability would be depend on the facts and circumstances of each case. In my view, due to accidental injuries there was a fracture to the spine of the claimant due to which he may not have filed claim petition in reasonable time. Delay in filing claim petition cannot be a ground to deprive the claimant from getting compensation for which he is entitled. It is the duty of Insurance Company to pay the compensation to the third party as early as possible without raising any technical issue. Because of accident someone's sole earning member or family member lose or some get injured permanently compensation is not alternative of their profound grief, but it is a solace to them for the pain they have received.

5. While dealing with the issue of restricted liability of Rs.15,000/-, the Tribunal has observed that as per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Behari Lal & Ors.***[2]*,* the Insurance Company is liable to pay compensation and has

2 2000 ACJ 1428 SCC

passed reasoned order. I do not find infirmity in it. It appears from the record that the claim petition was filed under Section 140 of M.V. Act and it was dismissed in the year 2002. Thereafter, main claim petition filed under Section 166 of Motor Vehicles Act was dismissed. The dismissal period is for 52 months. The claimant is not entitled for interest for this delayed period.

6. In view of the above, I pass following order :

O R D E R

i. The appeal is partly allowed.

ii. Respondent No.1/ claimant is entitled for compensation amount as per the order passed by the Tribunal along with interest fixed by the Tribunal from the date of filing claim petition till realisation of amount. The claimant is not entitled for interest on compensation amount for 52 months.

iii. The appellant/Insurance Company is permitted to withdraw the interest of 52 months on deposited amount. The claimant is permitted to withdraw the balance deposited amount along with proportionate amount.

iv. The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.

7. The appeal is disposed of. All pending applications, if any, also disposed of.

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2024.04.15 16:59:46 +0530