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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on :09.10.2015

+ MAC APP.89/2014 & CM No.14779/2014

DELHI INTERNATIONAL AIRPORT PVT. LTD. Appellant

Through: Mr. Amit Singh Chadha, Sr. Adv.
with Mr.Saurabh Jain, Adv.

versus

RINKI AND ORS. Respondents

Through: Mr. Sunil Kumar Verma, Adv. for
D-1 to 3
Mr. Joy Basu, Sr. Adv. with Ms.
Hetu
Arora Sethi, Adv. for D-4

+ MAC APP.91/2014

DELHI INTERNATIONAL AIRPORT PVT. LTD. Appellant

Through: Mr. Amit Singh Chadha, Sr. Adv.
with Mr.Saurabh Jain, Adv.

versus

NEENA VERMA AND ORS. Respondents

Through: Mr. Ashok Bhasin, Sr. Adv. with
Mr. D. S. Khatana & Mr.Sunklan
Porwal, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. These two appeals are filed by the appellants seeking to impugn the Award dated 12.11.2013. The MAC.App.89/2014 is filed against the Legal Heirs of late Shri Nidhish Yadav while MAC.App.91/2014 is filed against the legal heirs of late Shri Ashok Chand Verma.

2. The brief facts which led to filing of the claim petition are that the appellant is the Airport Operator at the Delhi International Airport Pvt.

Ltd. i.e. Indira Gandhi International Airport. On 29.05.2009 a team of five persons who were employees of the appellant, were engaged in a fire fighting mock exercise and were deployed on a Airfield Crash Fire Tender ROSENBAUER. As part of the training procedure, they had to reach at a specified destination in 1½ minutes. This exercise was to test their preparedness in the event of an accident. However, unfortunately on the way to the destination the Fire Tender met with an accident. Shri Nidhish Yadav and Shri Ashok Chand Verma suffered fatal injuries. Three other persons escaped with grievous/simple injuries. The LR's of late Shri Ashok Chand Verma alleged that the accident took place due to the negligence of the driver Shri Nidhish Yadav. The LR's of Nidhish Yadav have, however, denied his negligence but have stated that the accident took place due to the negligence of the appellant.

3. By the impugned award, the Tribunal concluded, based on the evidence of two eye witnesses, that the accident did not take place due to the negligence of the deceased driver but due to the failure of the appellant to ensure proper light at the place of the accident and for want of anti glare glass on the Fire Tender. Had the Fire Tender had anti glare glass, the deceased driver would not have got blinded due to falling of sudden light on his eyes and could have averted the accident. Regarding the liability to pay compensation to the LR's of the deceased/claimants the Tribunal concluded that the insurance company/ respondent No.4 is liable to pay only to the extent provided under the Workmen's Compensation Act, 1923 to the claimants/LR's of the deceased driver Shri Nidhish Yadav. The balance would have to be paid by the appellant. Regarding Shri Ashok Chand Verma, the Tribunal held that since the insurance

company had undertaken to cover only one employee, the compensation to the claimants/LRs of deceased Shri Ashok Chand Verma would be payable by the owner of the vehicle i.e. appellant.

4. Based on the evidence on record the Tribunal awarded Rs.27,26,400/- to the LRs of the deceased Shri Nidhish Yadav towards loss of dependency, Rs.1 lac for loss of consortium, Rs.1 lac for loss of love and care for the minor son, Rs.25,000/- for cremation charges and Rs.10,000/- for loss of estate being a total of Rs.29,51,400/-. Regarding the case of Ashok Chand Verma, the loss of dependency was calculated at Rs.49,89,600/-. Loss of consortium of Rs.1 lac, Rs.25,000/- for loss of love and affection, Rs.25,000/- for cremation charges and Rs.10,000/- for loss of estate was awarded being a total compensation of Rs.51,49,600/-.

5. From the above amount the Tribunal noted the evidence of one eye witness PW-3 to hold that the deceased were not wearing seat belts. Hence, 10% amount was deducted from the compensation awarded for self negligence. In addition, the Tribunal noted that LRs of Shri Nidhish Yadav had received Rs.4,15,960/- under the Workmen's Compensation Act while LRs of Shri Ashok Chand Verma had received Rs.2,78,260/-. This amount received under the Workmen's Compensation Act was also liable to be deducted from the compensation awarded. The appellants were directed to pay the amount with interest @7.5% per annum from the date of filing the claim petition till realisation.

6. Learned senior counsel appearing for the appellant has broadly stressed on one submission. He vehemently argued that the Fire Tender in question is not a motor vehicle as defined under section 2(28) of the Motor Vehicles Act inasmuch as it is a special type of vehicle adopted

only to be used in enclosed premises, namely, the Airport. It is a Fire Tender meant only for the Airports and cannot be used in public places for normal running. Hence, it was strenuously urged that not being a motor vehicle, section 165 of the Motor Vehicle Act which stipulates the jurisdiction of the Tribunal, would not apply and the remedy, if any, of the LRs of the deceased employees would at best be a civil Court. Reliance is placed on ***Chairman, Rajasthan State Road Transport Corporation and Others vs. Santosh and Others, (2013) 7 SCC 94*** and ***Bolani Ores Ltd. vs. State of Orissa, (1974) 2 SCC 777*** to support the above contention.

7. Reliance is also placed on a circular dated 03.11.1992 issued by Government of India, Ministry of Surface Transport which states that specialised equipments used within enclosed Airports only cannot be deemed to be motor vehicles under section 2(28) of the Motor Vehicles Act. It is urged that the circular would be binding keeping in view the various judgments of the Supreme Court including ***B.S.Minhas vs. Indian Statistical Institute and Others, 1983 (4) SCC 582***.

8. The last argument which was made though not pressed was that the LRs of the deceased employee having received compensation under the Workmen's Compensation Act would not be eligible for compensation under the M.V.Act.

9. Learned senior counsel appearing for the LRs of the deceased have strenuously urged that the contentions are baseless. He urges that the appellant, which is a large company is needlessly harassing LRs of the deceased employee in this manner by filing frivolous litigations. It is further urged that the contention which is now sought to be raised before

this Court about the fire tender not being a motor vehicle was never raised before the Tribunal. In any case, the vehicle in question, namely, the Fire Tender is a motor vehicle inasmuch as it is a mechanically propelled vehicle with power of propellation transmitted from an internal source and is squarely covered under section 2(28) of the M.V.Act.

10. Learned senior counsel appearing for the respondent/insurance compay has submitted that the Tribunal has already held that the liability of the said insurance company is limited to the compensation quantified under the Workmen's Compensation Act regarding the liability of one employee, namely, the driver. If this Court does not interfere with the said finding about liability of the respondent/insurance company he submits he would not be making submissions on merits.

11. A perusal of the impugned Award shows that the appellants did not raise the said issue now raised here before the Tribunal. However, learned senior counsel for the appellant has contended that this is a purely legal question going to the root of the matter inasmuch as it deals with the very jurisdiction of the Tribunal to have entertained the claim petition. As it was urged that it was a purely legal issue that the appellant wishes to raise, the appellant was permitted to raise the said contention.

12. I may first look at section 2(28) of The Motor Vehicles Act, 1988. The same reads as follows:-

2(28). "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory

or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres;

13. Similarly, section 165(1) reads as follows:-

165. (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both

14. Hence, the claims tribunal would be entitled to entertain a claim petition filed pursuant to an accident only in case of an accident arising out of use of a motor vehicle.

15. The issue that is sought to be argued is that the vehicle in question, namely, fire tender in issue is not a motor vehicle. In ***Bolani Ores Ltd. vs. State of Orissa (supra)*** the Supreme Court held as follows:-

“24. The question would then arise, are dumpers, rockers and tractors suitable or fit for use on roads ? It is not denied, that these vehicles are on pneumatic wheels and can be moved about from place to place with mechanical power. The word "vehicle" itself connotes that it is a contrivance which moves. A vehicle which merely moves from one place to another need not necessarily be a motor vehicle within the meaning of Section 2(28) of the Act. It may move on iron flats made into a chain such as a caterpillar vehicle or a military tank. Both move from one place to another but are not suitable for use on roads. It is not that they cannot move on the roads but they are not adapted, made fit or suitable for use on roads.

They would, if used, dig and damage the roads. It is contended that the dumpers or rockers are very heavy and though they can move on roads they would damage the roads and, therefore, they are not suitable for use on roads.....

26. In so far as the tractairs are concerned, attachments are fitted for the purpose of supplying compressed air to Jack Hammer Drills which are used to drill holes in the ore body so that explosive charges may be inserted in them to break the ore into manageable sizes. In respect of all these three types of vehicles it cannot be said that they are not adapted for use upon roads. That they are not so used or are confined for use to only places other than roads or public places is a different matter, because whether they have to be registered under the Act or are liable for payment of tax under the Taxation Act will depend upon the provisions of the respective Acts.

16. Reference may also be had to the judgment of the Supreme Court in the case of ***Chairman, Rajasthan State Road Transport Corporation and Others vs. Santosh and Others (supra)***. That was a case where the issue was whether the vehicle “jugaad” is a motor vehicle under section 2(28) of the Act. The vehicle was described as an improved version of a bullock cart. While interpreting section 2(28) of the Act the Supreme Court noted as follows:-

“22....Thus, any vehicle which is mechanically propelled and adapted for use upon roads and does not fall within the exceptions provided therein, is a motor vehicle within the meaning of Section 2(28) of the Act.”

17. It also noted with approval the observations of the Supreme Court in ***Natwar Parikh & Co.Ltd. vs. State of Karnataka, 2005 (7) SCC 364*** where the Supreme Court had held as under:-

“24. Section 2(28) is a comprehensive definition of the words "motor vehicle". Although, a "trailer" is separately defined under Section 2(46) to mean any vehicle drawn or intended to be drawn by motor vehicle, it is still included into the definition of the words "motor vehicle" under Section 2(28). Similarly, the word "tractor" is defined in Section 2(44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles etc....”

18. Hence it depends on the nature of the vehicle. The admitted fact is that there is no attempt to place on record by the appellant before the Tribunal any evidence relating to the nature of the vehicle and as to whether on facts it can be said that the concerned vehicle is a special type of vehicle adopted for use in an enclosed premises. A photocopy of a brochure was only filed in Court showing that it is termed as ROSENBAUER . The brochure states that it has a 12 cylinder engine, interlinked 4 stroke diesel engine with a 8 x 8 wheel drive. As per the brochure it is clearly a mechanically propelled vehicle adopted for use on road. The only issue is as to whether it would fall within the proviso of 2(28) of the Act, namely, a vehicle of a special type adopted for use only in a factory or in enclosed premises. It has been vehemently urged that it is specifically designed only to function in Airports and cannot run outside an airport. The brochure, besides not have been brought in evidence, does not in any manner show that it cannot be used outside on airport.

19. In para 30 of *Chairman, Rajasthan State Road Transport Corporation and Others vs. Santosh and Others (supra)* the Supreme Court also held as follows:-

“30. As to whether a particular vehicle can be defined as motor vehicle in terms of Section 2(28) of the Act, is to be determined on the facts of each case taking into consideration the use of the vehicle and its suitability for being used upon the road. Once it is found to be suitable for being used on the road, it is immaterial whether it runs on the public road or private road, for the reason, that actual user for a particular purpose, is no criteria to decide the name...”

20. Hence, whether a vehicle can be termed to be motor vehicle under Section 2(28) or not is a question of fact. It was for the appellant to have led evidence before the Tribunal to show that the vehicle could not possibly be said to be a motor vehicle inasmuch as it was a special type of vehicle meant to be used only in an enclosed premises. Merely filing of a brochure before the appellate Court and making a submission to the said effect would not suffice to reach a conclusion, that it is not a motor vehicle as provided in S.2(28) of the Act.

21. Before the Tribunal, the appellant had led the evidence only of Sh.Shiv Nath Singh-R1W1, Associate Manager (HR) of the appellant Company. He in his affidavit by way of evidence he gives no evidence of the nature of the vehicle that was involved in the accident. Apart from leading no evidence before the Tribunal, it is also noteworthy that the appellant did not think it proper to file an appropriate application before this court seeking permission to lead additional evidence on this point. Without having led evidence, an attempt has been made to argue about

the inapplicability of the Motor Vehicles Act claiming it to be a pure question of law. The contention is without merit inasmuch as in the absence of proper evidence, it is not possible to conclude that the vehicle in question was specially designed to operate only in an enclosed space as is sought to be claimed.

22. There is hence no merit in the said contention of the appellant. It cannot be accepted that the fire tender in question which caused the accident was not a motor vehicle.

23. The second issue that was raised by the appellant pertains to a circular dated 3.11.1992 relied upon by the appellant to stress that the vehicle in question is not a motor vehicle. Relevant portion of the circular reads as follows:-

“GOVERNMENT OF INDIA
MINISTRY OF SURFACE TRANSPORT
(TRANSPORT WING)

No.RT-110044/4/92-MVL New Delhi the 3rd November
1992

To,

Transport Secretaries of all,
State Government/UT Administrations,
Subject: Ramp up Equipment used for flight handling

Sir,

I am directed to say that the Ministry of Civil Aviation have pointed out that some of their specialised equipments which are used for flight handling within the premises of the Airport had been seized and Airport Authorities asked to register the same like any other vehicle. They have pointed out that such equipment do not come under the purview of Motor Vehicle Act as these are of specialised

nature and cannot be made use of for general application. A list of these equipments is enclosed for ready reference.

2. The matter has been examined in this Ministry and it is observed that:

(a) The specialised equipments adopted for use within the enclosed airport areas only cannot be deemed to be Motor Vehicle under Section 2(28) of the Motor Vehicle Act.

(b) An aerodrome is apparently a restricted area. It cannot be deemed to be a public place as defined in section 2(34) of the Motor Vehicles Act.”

24. A perusal of the said circular shows that it is a communication addressed by Union of India to transport secretaries of various State Governments clarifying statutory provisions of the M.V.Act. It appears that subsequently the Union of India has taken out a list of “Specialised Equipment Used for Flight Handling”. Learned senior counsel for the appellant has strenuously urged that a reading of these two documents would show that the fire tender in question is a specialised equipment which can only be run within the airport premises.

25. The said circular is a mere communication issued by the Government of India. It is not a notification issued by Government of India in exercise of powers under any provisions of the M.V.Act. The circular cannot amend, modify or vary the statutory definition of a motor vehicle as provided in the M.V.Act. There is no attempt to show how the said communication would be applicable to the facts of the present case and would supersede the statutory definition of a motor vehicle.

26. The reliance of the appellant on judgment of the Supreme Court in *B.S.Minhas vs. Indian Statistical Institute and Others (supra)* is misplaced. That was a case in which the Supreme Court had held that it

was obligatory on the part of respondent No.1 to follow its bye-laws. In the present case the letter cannot be said to be a bye law. It is not shown to have been issued in exercise of any statutory power. In any case, it is settled legal position of law that a rule or bye-laws must conform to the provision of the statute under which it is framed. A rule has to be in accordance with parent statute and it cannot travel beyond it. Reference may be had to the judgments in this context of the Supreme Court in ***General Officer Commanding-in-Chief & Anr. v. Dr. Subhash Chandra Yadav & Anr. (AIR) 1988 SC 876*** and ***Union of India & Ors. v. S. Srinivasan (2012) 7 SCC 683***. Hence, there is no merit in the contention of the appellant that the circular is a final determining document to determine as to whether the fire tender in question which caused the accident is a motor vehicle or not.

27. Coming to the last submission of the appellant, namely, the issue of compensation awarded to the LRs of the deceased workman under the Workmen's Compensation Act and the contention that the claim petition is barred under section 167 of the Act. In the course of arguments of the appellant, this contention was raised but not elaborated.

28. It has been contended by the respondents/claimants that they did not approach the authority under the Workmen's Compensation Act for claiming any compensation. It is urged that the appellant suo moto deposited the compensation payable under the Workmen's Compensation Act before the concerned authority and that they are now falsely trying to claim that the respondents/claimants have applied for compensation under the Workmen's Compensation Act.

29. I am inclined to believe the contention of the

respondents/claimants. R1W1-Sh.Shiv Nath Singh, the sole witness of the appellant in his affidavit by way of evidence before the Tribunal states that the respondents/claimants had filed a petition before the Commissioner, Workmen Compensation, Hari Nagar, New Delhi and that the appellant had deposited the compensation amount before the concerned authority which has been duly received by the respondents/claimants. However, in his cross-examination, he says that he has not brought the notice of claim petition or copy of the claim petition received by him allegedly filed by the claimants. He offered to file the same after checking from the records. Later on he clarified his statement by saying, “Again said, I do not know whether we had deposited the compensation on our own or on the application of LR’s of the deceased”. Hence, it is clear that the appellant had suo moto deposited the compensation amount payable under the Workmen’s Compensation Act. They cannot be permitted to take advantage of their own acts to now claim that the claimants/respondents cannot claim compensation before the MACT.

30. In this context, reference may be had to the judgment of the learned Single Judge of this High Court in the case of **MCD v. Mukesh Kumari**, FAO No.152/2004 dated 01.04.2009. This Court held that where an employer has *suo moto* deposited the compensation under the Workmen’s Compensation Act, it will not disentitle the claimants from seeking the compensation under the MV Act. Relevant Para of the said judgment reads as follows:

“6. The first ground of challenge by the appellant is that the claim petition was not maintainable as the claimants had

taken the compensation under the Workmen's Compensation Act. The learned Tribunal has considered this plea in para 19 of the award. The claimants/respondents No.1 to 5 never applied for compensation under Workmen's Compensation Act. The appellant suo moto deposited the compensation under the Workmen's Compensation Act which will not disentitle the claimants from seeking the compensation under the Motor Vehicles Act as Section 167 of the Motor Vehicles Act gives the option to the claimants to seek compensation either under the Workmen's Compensation Act or Motor Vehicles Act and the claimants/respondents clearly opted for compensation under the Motor Vehicles Act."

31. Reference may also be had to the judgment of the Supreme Court in the case of ***Ramchandra v. Regional Manager, United India Insurance Co. Ltd., (2013) 12 SCC 84***. While dealing with a case where the claimant suffered injury while travelling in a *Swaraj Majda* as a cleaner, the Court held as follows:

"23. The claimant/appellant is surely entitled to the amount of compensation over and above the Workmen's Compensation Act in view of the ratio of the decisions referred to hereinbefore. The rider no doubt is that the statutory liability cannot be more than what is required under the statute under Section 95 of the Motor Vehicles Act which cannot bind the parties or prohibit them from contracting or creating unlimited or higher liability to cover wider risk and the insured is bound by the terms of the contract specified in the policy in regard to unlimited or higher liability as the case may be. Thus, it is although correct that limited statutory liability cannot be extended to make it unlimited or higher, it is also manifestly clear that insofar as the entitlement of the claimant/deceased cleaner of the vehicle is concerned, the same cannot be restricted to the compensation under the Workmen's Compensation Act and is entitled to compensation even under the Motor

Vehicles Act which will depend upon the terms and conditions of the policy of insurance.

24. From this legal position it is also equally clear that in the instant matter insofar as the entitlement of the claimant to the compensation under the Motor Vehicle Act is concerned, the right of the claimant is not affected.....”

32. There is clearly no merit in the contention of the appellant that the claimants/respondents are not entitled to the compensation under the MV Act.

33. The impugned Award has also directed that from the compensation that has been awarded as compensation payable under the Workmen’s Compensation Act be deducted from the awarded amount.

34. Hence, there is no merit in the present appeals. Same are dismissed with costs. All the pending applications are also dismissed accordingly.

35. This Court on 29.01.2014 had directed the appellants/insurance company to deposit the entire award amount alongwith up to date interest accrued with Registrar General of this Court. Subject to such deposit a stay of the impugned award was directed. Accordingly, the aforesaid stay is vacated and the Registrar General is directed to release the entire deposited amount with upto date accumulated interest proportionately as directed in the Award.

**(JAYANT NATH)
JUDGE**

OCTOBER 09, 2015

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