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IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.2 of 2021

***Divisional Manager, The New India
Assurance Company Ltd.***

Appellant

Mr. G.P. Dutta, Advocate

-versus-

Susama Mallick and Others

Respondents

Mr. D.K. Mohapatra, counsel for Respondents 1&2

**CORAM:
SHRI JUSTICE B. P. ROUTRAY**

**ORDER
11.10.2022**

Order No.

- 10.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. G.P. Dutta, learned counsel for the insurer – Appellant and Mr. D.K. Mohapatra, learned counsel for claimant- Respondents 1&2.
 3. Present appeal by the insurer is against the impugned judgment dated 28th February, 2020 of the learned 3rd MACT, Jajpur passed in MAC Case No.49 of 2013 wherein compensation to the tune of Rs.5,14,000/- along with interest @ 6% per annum has been granted on account of death of deceased Alok Kumar Mallik @ Jrna by use of the Bolero vehicle bearing registration number OR 05AT 2364.
 4. Mr. Dutta, learned counsel for the insurer submits that this is a case of murder and the deceased was murdered for the purpose of murder and not for felony of stealing the vehicle. Therefore, the

finding of the tribunal that the murder is accidental in the object of the felony, is erroneous and the impugned award is liable to be set aside.

5. Mr. Mohapatra, learned counsel for the claimant on the other hand supports the impugned award.

6. The case of the claimants is that the deceased was working as a driver of the offending Bolero vehicle. The vehicle was taken on hire by some unknown persons and later the dead body of the deceased was found in a secluded place at Khuntuni. In the police investigation, it came to light that the deceased was murdered by the unknown accused persons, who were arrested later on and criminally prosecuted. The claimants filed their claim for compensation under Section 163-A of the Motor Vehicle Act and in support of their claim they relied on the decision of Hon'ble Supreme Court in the case of ***Smt. Rita Devi and Others v. New India Assurance Co. Ltd. and Another, 2000(2) T.A.C. 213 (SC).***

7. It is seen from the impugned judgment that the tribunal at paragraph 11 has concluded that for the act of felony of stealing the vehicle, the accused persons murdered the deceased. The relevant observations are as follows:-

“11. In the instant case applying the above principle of the reported decision, from the evidence of P.W.1, P.W.2 and OPW.1 the fact has been proved that the deceased was working as a driver in the vehicle and on the fateful day after obtaining due permission from the registered owner, he accepted the demand of said fair paying unknown passengers for the purpose of traveling by said vehicle from Chandikhole stand to Narsinghpur. It reveals from Ext.1 to Ext.10 that in

course of said travelling by the vehicle said passengers committed the act of felony of stealing said vehicle and in order to achieve their object and they eliminated the deceased and threw the dead body which was recovered in decomposed state near Arati Steel of Khuntuni Jungle. The said fact of circumstance of death of the deceased clearly gets support from the postmortem examination report as per Ext.5 of the M.O., SCB MCH, Cuttack. Further, it reveals from Ext.8 the seizure list that while the perpetrators (accused persons in Badachana P.S. Case No.191/2012) of said crime were proceeding with the vehicle in suspicious manner, it was recovered and seized from their possession at Balaugaon by the S.I. of Police, Nachuni Out-Post (Banpur P.S.). So, from the above fact and circumstances as revealed from Ext.8 which lends support claim of the petitioners regarding the cause and circumstance of the death of the deceased and the same are sufficient enough to come to a conclusion that the stealing of the vehicle was the object of the felony and the murder was caused in the said process of stealing of the vehicle which was only incidental to the act of stealing of the vehicle. So, the death of the deceased was caused in course of his employment as a driver in the vehicle and the same is an accidental one in the process of committing theft of the vehicle. Therefore, the contention of the learned advocate for O.P. No.2 deserves no merit and the petitioners are entitled to get compensation under the M.V. Act. The O.P. No.1 being the registered owner and O.P. No.2 being the insurer of the vehicle are jointly and severally liable for making payment of the compensation to the petitioners and the O.P. No.2 being the insurer is to be fastened for making payment of the compensation by indemnifying the liability in respect of O.P. No.1.”

8. The relevant observations of the Supreme Court in the case of ***Smt. Rita Devi*** (supra) need to be reproduced here. In the said case, the deceased was a driver of an auto rickshaw who was murdered by unknown accused persons while stealing the auto rickshaw. The Supreme Court has observed as follows:-

“10. The question, therefore is, can a murder be an accident in any given case? There is no doubt that “murder”, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a “murder” which is not an accident and a “murder” which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

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14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto-rickshaw, was duty bound to have accepted the demand of fare-paying

passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto-rickshaw and in the course of achieving the said object of stealing the auto-rickshaw, they had to eliminate the driver of the auto-rickshaw then it cannot but be said that the death so caused to the driver of the auto-rickshaw was an accidental murder. The stealing of the auto-rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto-rickshaw is only incidental to the act of stealing of the auto-rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing theft of the auto-rickshaw.

15. Learned counsel for the respondents contended before us that since the Motor Vehicles Act has not defined the word “death” and the legal interpretations relied upon by us are with reference to the definition of the word “death” in the Workmen's Compensation Act the same will not be applicable while interpreting the word “death” in the Motor Vehicles Act because according to her, the objects of the two Acts are entirely different. She also contends that on the facts of this case no proximity could be presumed between the murder of the driver and the

stealing of the auto-rickshaw. We are unable to accept this contention advanced on behalf of the respondents. We do not see how the object of the two Acts, namely, the Motor Vehicles Act and the Workmen's Compensation Act are in any way different. In our opinion, the relevant object of both the Acts is to provide compensation to the victims of accidents. The only difference between the two enactments is that so far as the Workmen's Compensation Act is concerned, it is confined to workmen as defined under that Act while the relief provided under Chapter X to XII of the Motor Vehicles Act is available to all the victims of accidents involving a motor vehicle. In this conclusion of ours we are supported by Section 167 of the Motor Vehicles Act as per which provision, it is open to the claimants either to proceed to claim compensation under the Workmen's Compensation Act or under the Motor Vehicles Act. A perusal of the objects of the two enactments clearly establishes that both the enactments are beneficial enactments operating in the same field, hence the judicially accepted interpretation of the word "death" in the Workmen's Compensation Act is, in our opinion, applicable to the interpretation of the word "death" in the Motor Vehicles Act also.

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18. In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the

murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.”

9. Now coming to the challenge put forth by Mr. Dutta in the instant case, as per him, the deceased was killed for the purpose of murder and the accused persons were not unknown to him prior to his murder. For the same, no separate evidence is brought and the insurer has relied on those police papers submitted on behalf of the claimants. But it has examined one witness on their behalf, namely, Kailash Chandra Mishra, who is their investigator.

10. Perusal of copy of the charge-sheet under Ext.2 reveals that the stolen vehicle was seized from Banpur from possession of three accused persons. The charge-sheet further reveals the statement that “.. .. *the accused persons know each other earlier.. ..*”. Therefore a plain reading of the contents of the charge-sheet reveals that the object of the accused persons was to commit theft and this being their primary object, they killed the deceased in accomplishment of the same. The contents of the charge-sheet never suggest that the accused persons were also known to the deceased and therefore, the contention of Mr. Dutta that it was a case of murder simplicitor associated with subsequent act of theft of bolero vehicle is found incorrect.

11. A further perusal of the evidences adduced by the witnesses produced from the side of the claimants as well as the owner suggests that the accused persons were unknown to the deceased prior to the occurrence. Mr. Sunil Kumar Das, OPW-1 (the husband of the owner) has stated in his evidence that the Bolero vehicle was stolen by some unknown culprits in the guise of hiring of the same along with the driver (the deceased). Therefore the conclusion arrived by the tribunal that the accused persons committed murder of the deceased in order to accomplice the act of felony of stealing the Bolero vehicle is confirmed. Further the recovery of the Bolero vehicle from possession of some of the accused persons at Banpur is supporting such conclusion.

12. In view of above observations the contention of the insurer to treat this as a case of murder simplicitor is thus rejected.

13. Next coming to the quantum of compensation, it is contended by Mr. Dutta that this being a claim under Section 163-A of the MV Act, the amounts at no circumstance should go beyond such prescriptions mentioned in Schedule-II of the MV Act. The amount of Rs.70,000/- granted towards consortium and general damages by the tribunal is thus challenged as erroneous.

14. No quarrel is there that the claim application is under Section 163-A of the MV Act. It is true that as per Clause 3 of 2nd Schedule the general damages except medical expenses are to the tune of Rs.9500/- in total. However, keeping in view the principles enumerated in the case of *National Insurance Company Ltd. v. Pranay Sethi and Others (2017) 16 SCC 680*, irrespective of the fact that the said case is a claim under Section 166 of the MV Act, the

amount of Rs.30,000/- towards general damages and Rs.40,000/- towards consortium, granted in favour of the claimants cannot be said as illegal. Therefore no reason is seen to interfere with the impugned award and the amount of compensation granted by the tribunal is thus confirmed.

15. In the result the appeal is dismissed and the insurer – Appellant is directed to deposit the entire compensation amount along with interest before the tribunal in terms of direction of the tribunal within a period of two months from today; where-after the same shall be disbursed in favour of the claimant – Respondents on same terms contained in the impugned judgment.

16. The statutory deposit made by the insurer - Appellant before this court along with accrued interest be refunded to the Appellant - insurer on proper application and on production of proof of deposit of the awarded amount before the tribunal.

17. The copies of documents and depositions as filed by Mr. Dutta are kept on record.

18. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge