

IN THE HIGH COURT OF ORISSA AT CUTTACK
MACA No.923 of 2013

***Commissioner-cum-Secretary,
Department of Sports and Youth
Services, Government of Odisha and
Another*** ***Appellants***

Mr. P. Bharadwaj, Additional Standing Counsel

-versus-

Miss Gouri Kumari Sahu and Others ***Respondents***

Ms. Sagarika Sahoo, counsel for Respondent No.1

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
02.12.2022

Order No.

- 20.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. P. Bharadwaj, learned Additional Standing Counsel for the Appellant and Ms. S. Sahoo, learned counsel for the claimant – Respondent No.1.
 3. Present appeal at the instance of State is directed against the impugned judgment dated 17th May, 2013 of the learned 1st MACT, Gajapati, Parlakhemundi passed in MAC No.6 of 2007, wherein compensation to the tune of Rs.5,55,000/- has been granted on account of injuries sustained by the injured – claimant in the motor vehicular accident dated 30th October, 2004. The tribunal has further observed that the State has to pay the compensation at the first instance and recover the amount either from the insurer or from the owner of the offending vehicle.

4. The facts of the case in nutshell are that, the claimant is a young woman aged about 23 years on the date of accident and resides at Parlakhemundi in the district of Gajapati, Odisha. She was selected for the Inter-State Youth Meet, 2004 to be held at Simla, Himanchal Pradesh from 28th October, 2004 to 10th November, 2004 along with other candidates. At Simla, on 30th October, 2004 when she was waiting for a vehicle along with her team members, present Respondent No.3 by driving an Yamaha motor cycle bearing registration number CH 01W 2052, belonging to present Respondent No.2, dashed against her being driven in rash and negligent manner. Due to the accident the claimant sustained multiple grievous injuries and received treatment for a quite long period. Subsequently the claim application was filed by her under Section 166 of the Motor Vehicles Act (hereinafter referred as 'MV Act') before the District Judge-cum-1st MACT, Gajapati in MAC No.6 of 2007. In the claim application, she along with the owner and driver of the offending motor cycle, impleaded the State authorities, viz., the Commissioner-cum-Secretary, Department of Sports and Youth Services and the Collector, Gajapati also.

5. Admittedly, the offending motor cycle has no valid insurance policy on the date of accident and no insurance company has been made party in the claim application. Three witnesses were examined on behalf of the claimant and one witness namely, Nibedita Acharya (OPW-1) was examined, allegedly on behalf of Opposite Party No.1 and 2. It needs to be mentioned here that said OPW-1 was neither authorized by the State Opposite Parties (Opposite Party No.1 and 2 before the tribunal), either by the Collector or by the Secretary, nor

has produced the authorization order by the State – Opposite Parties. None of the Opposite Parties including the State filed their written statement.

6. The tribunal framed three issues regarding sustenance of injuries by the claimant, her entitlement for compensation, the quantum of compensation and the liability for such compensation. Interestingly, the tribunal did not frame any issue with regard to negligence on the part of the driver and owner of the offending vehicle. The tribunal ultimately held that the claimant is entitled for compensation and then quantified the same to Rs.5,55,000/-. It directed the State authorities to pay the compensation amount on the ground that she should not let to suffer because she could not ascertain the name of the insurer of the offending vehicle and secondly, she had been to Simla on a Government sponsored programme.

7. Mr. Bharadwaj, learned ASC submits for the State that the State authorities has no role in the matter and such a direction issued to them to pay the compensation in an application filed under Section 166 of the MV Act is not sustainable. He further submits that, besides the question of liability, the state borne all treatment expenses of the victim and additionally has paid rupees one lakh to the victim.

8. Ms. Sahoo, learned counsel for the claimant submits that when the claimant has admittedly sustained injuries and suffered a lot for her treatment, she cannot be left at lurch only for the reason that the offending vehicle was uninsured one on the date of accident, and in such matters the State cannot wash out their hands. She further submits that this being a welfare state and the provisions of MV Act for grant of compensation being social welfare provisions, there is no

illegality in the direction of the tribunal to pay the compensation by the State.

9. The provision of the MV Act entitles a victim of motor vehicular accident to get compensation from the owner on the principles of vicarious liability. Nowhere under the MV Act, the State is burdened with payment of compensation to the victim of road traffic accident. It is different that under the Civil Law compensation can be claimed from the responsible person including the state for tortious liability. But this is a case filed under Section 166 of the MV Act and in terms of Section 168, the tribunal is authorized to direct for just compensation to be paid either by the insurer or by the owner subject to provisions contained in Chapter XI. It is true that under the provisions of MV Act, the authorities under the state have been empowered to verify the insurance and other validity in respect of a motor vehicle for its running on public road. But that does not bind the state authorities to pay compensation to the victim of a road traffic accident caused by the negligence of the driver of the motor vehicle.

10. The tribunal being a statutory authority has to act within the boundaries of the statute and it should not issue a blanket order for payment of compensation unsupported by the required authority under law. Here in the present case, the learned Motor Accident Claims Tribunal has no authority or jurisdiction to entertain a claim application for tort under the civil law except the provisions contained in the MV Act. Therefore, such a direction issued by the tribunal to the State to pay the compensation to the claimant on account of injuries sustained by her in a motor vehicular accident cannot be allowed to sustain. The same is accordingly set aside. The owner of

the offending motor cycle, i.e. present Respondent No.2 is liable to pay the compensation amount and accordingly, present Respondent No.2 is directed to pay the compensation amount as determined by the tribunal.

11. In the result, the appeal is allowed and the direction of the tribunal to the State to pay the compensation amount is set aside. The owner of the offending vehicle, i.e. present Respondent No.2 is directed to pay the amount of compensation as determined by the tribunal to the claimant within a period of four months from today, failing with the claimant is at liberty to realize the same from the owner – Respondent No.2 in accordance with law.

12. However, the observations of this court in the present order would not stand on the way of the victim – Respondent No.1 for claiming compensation from the state authorities under appropriate provisions of law in appropriate forum and in such event, the competent court shall consider the period of pendency of the claim application as well as present appeal for condonation of limitation.

13. The statutory deposit made by the State - Appellant before this court as well as amount deposited before the learned tribunal, along with accrued interest, be refunded to the Appellant on proper application.

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

(B.P. Routray)
Judge