

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.1062 of 2016

***Managing Director,
M/s.Southern Ispat Ltd.***

.... Appellant

Mr.L.Samantray, Advocate

-versus-

Raku Kamu Patra and others

.... Respondents

Mr.G.P.Dutta, Advocate for Respondent No.3

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

**ORDER
22.9.2022**

Order No.

7.

1. The matter is taken up through Hybrid mode.
2. Heard Mr.Samantray, learned counsel for the Appellant and Mr.Dutta, learned counsel for the Insurer-Respondent No.3.
3. Present appeal by the owner of the offending truck is directed against the judgment dated 30th June, 2016 of the learned 2nd Addl. District Judge-cum-Motor Accident Claims Tribunal, Berhampur, Ganjam in MAC No.276 of 2010-GDC, wherein compensation to the tune of Rs.3,50,000/- has been granted along with interest @ 6% per annum with effect from the date of filing of the claim application on account of death of the deceased in the motor vehicular accident dated 10th March, 2008.
4. Mr.Samantray submits that present Appellant is the owner of the offending truck as well as the employer of the deceased and the accident took place within the premises of the factory and the

claimants have received the compensation under the provisions of the Employees' State Insurance Act, 1948 and therefore, they are not entitled for any compensation under the M.V.Act.

5. Mr.Dutta, learned counsel for the Insurer supports the submission of Mr.Samantray, who contends that the claimants are not entitled for any compensation under the M.V.Act in view of the bar contained in Section 53 & 61 of the E.S.I.Act.

6. Upon hearing both parties, it reveals from the impugned judgment that the deceased while sitting on a heap of the sand in the premises of the factory, namely, M/s.Southern Ispat Ltd., the truck bearing Registration No.KL-09-M-0906 belonging to the company dashed against him resulting his death.

7. The Tribunal upon discussion under Issue Nos.2, 3 & 4 has come to the conclusion that the accident occurred in course of and arising out of the employment. Admittedly, the employment of the deceased as an employee under the Appellant remains undisputed. So in view of such findings of the Tribunal and in absence of any challenge from the side of the claimants to such findings of the Tribunal and in view of the admission that they have already received the compensation under the ESI Act, the same is confirmed. It is accordingly concluded that the deceased died out of employment injury as defined under Section 2(8) of the ESI Act. Therefore the bar contained under Section 53 and 61 of the E.S.I. Act applies and further claim for compensation under the M.V. Act is not maintainable.

8. Resultantly, the appeal is allowed and the impugned judgment is set aside.

9. The statutory deposit made by the Appellant with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

10. Urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

C.R.Biswal

