

20.11. 2023  
item No.9  
n.b.  
ct. no. 551

**FMA 780 of 2006**

**Purnima Seal & Anr.  
Vs.  
New India Assurance Co. Ltd.**

Mr. Saidur Rahaman,  
.....for the appellants.  
Mr. Rajesh Singh,  
.... For the respondent.

The instant appeal has been preferred against the judgment and award dated May 30, 2014 passed by the learned Judge, Motor Accident Claims Tribunal, Coochbehar, in M.A.C. case No. 2 of 2001 under Section 166 of the M. V. Act, 1988.

On the outset, it appears that the learned Tribunal has dismissed the claim case filed by the claimants/appellants. The ground for dismissal is that the claimants could not prove the rash and negligent driving of the driver of the offending vehicle.

In a nutshell, it is pertinent to mention that the fact of accident/death of the deceased in this case. It is the case of the claimant that deceased was a cleaner of the offending vehicle. On 27<sup>th</sup> November 1997 when the said offending vehicle reached near Dharaikuri Bridge, N.H. 31, some miscreants attacked the vehicle by stopping the vehicle with some wooden legs. The driver fled away but the miscreants entered into the vehicle and shoot gun

upon the deceased/cleaner. The deceased died by such gun injuries.

Hence the claim application was filed.

It further appears that initially the claimants had preferred an application before the Workmen's Compensation Tribunal. Thereafter, they did not proceed with the said claim case and file the instant claim application before the learned Tribunal. On observation of the same, the learned Tribunal has dismissed the claim case.

The learned advocate appearing for the appellant frankly submits that the instant case is maintainable under the Workmen's Compensation Act, 1923. It appears to me that the present appellant/claimant has proceeded to the wrong forum for getting compensation. In that score, their claim case was dismissed. It is true that the deceased was died when he was employed under the employment of the owner of the vehicle. So, he is entitled to get the compensation under the Workmen's Compensation Act subject to the observation/decision of the Commission.

It further appears from the impugned judgment that the insurance company has also contended the same contention before the learned Tribunal that the deceased was an employee under opposite party no.1 on the date of alleged accident and case lies under the Workmen's Compensation Act.

At this juncture, it appears to me that the appellant has proceeded to the wrong forum for getting compensation. They are otherwise entitled to get the compensation before the forum of Workmen's Compensation Act.

Accordingly, I think it necessary that the liberty may be given to the claimants/appellants to prefer an appropriate application for compensation under the Workmen's Compensation Act. I further observe that claimants are at liberty to file the same application within three months from the date of passing of this order before the appropriate forum, as mentioned hereinabove if they prefer such application as mentioned hereinabove, their claim would not be barred by limitations as they are actually exempted under Section 14 of the Limitation Act.

Accordingly, the Appeal is disposed of with this above observations.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**( Subhendu Samanta, J.)**