04.10. 2023
item No.2
n.b.
ct. no. 551

FMA 1801 of 2014

Tata AIG GI Co. Ltd.

Vs.

Haren Ch. Das & Ors.

Mr. Parimal Kumar Pahari,
..... for the appellant.
Mr. Subrata Bhattacharya,
...... for the respondents.

The instant appeal has been preferred against the judgment and award dated October 3, 2012 passed by the learned Tribunal, Additional District Judges Court, Durgapur, in M.A. C. case No. 36 of 2010 and 58 of 2009.

The brief fact of the case is that the present appellant being the claimant preferred an application before the learned Tribunal under Section 163A of the Motor Vehicles Act for getting compensation from the Insurance Company on the ground that their predecessor died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company. The Insurance Company contested the matter before the learned Tribunal.

After hearing the parties,the learned Tribunal has awarded a sum of Rs,4,80,000/- in favour of the claimants and the Insurance Company is directed to pay the compensation.

Being aggrieved by and dissatisfied with the impugned award, the present appeal has been preferred.

Learned advocate for the appellant submits that there are only two grounds to challenge the impugned order. **First**, it would be evident from the entire case that the deceased was the employee of the OP no.2 i.e. the owner of the offending vehicle; being an employee, the deceased cannot come under the purview of a third party. Thus, the claimants have their proper remedy before the forum of Worksmens' Compensation Act but the application 166 of the M.V. Act is not maintainable.

The **second** ground of challenge is that at the time of assessing the compensation, the learned Tribunal has made a deduction of $1/3^{rd}$ toward the personal expenses of the deceased, which is erroneous. According to the provisions of Section 166 of the M.V. Act. The deceased was bachelor, so, personal deduction would be ½ instead of $1/3^{rd}$.

Learned advocate for the claimant submits that the application was preferred before the learned Tribunal under Section 166 of the M. V. Act, though the deceased was an employee of the owner of the offending vehicle, but instead of which Section 166 of the M.V. Act is maintainable. He further argued that the provisions under Section 167 of the M.V. Act enumerates that the claimants may prefer an application before any one of the forums.

Heard the learned advocates and perused the materials on record, it appears that the claim application was preferred under Section 166 of the M.V. Act and the same was filed in the year 2009. Since then, the claimants roaming before this Court. Considering the same, it appears to me that the owner i.e the respondent no.3 being the owner of the offending vehicle cannot deny his liability to pay the compensation to the employees. It has been specifically provided in the Workmens' Compensation Act, the owner is liable to pay the employee when the employee is under the terms and conditions of his employment with the employee.

In this case, it is true that the contention of the learned advocate for the appellant is justified. However, in considering the provisions of Section 167 of the M.V. Act and the facts and circumstances of the case, the principle of pay and recovery may be adopted in this case. At this juncture, the appellant/insurance company is directed to pay just and proper compensation to the claimants and in turn they recover of the same from the owner of the offending vehicle according to the provisions laid down by the Hon'ble Supreme Court in **Swaran Singh**.

In considering the quantum of compensationof instant case, it appears that the income of the deceased was correctly calculated by the learned Tribunal to be Rs.4,000/- per month. 50% deducted that is personal expense. Thus, the monthly dependence comes to

Rs.2,000/-. Yearly dependence comes to Rs.24,000/-. At the time of accident, the victim was 20 years old, thus, the applicable multiplier is 17. After applying multiplier, the award comes to Rs.4,08,000/-. The claimants are also entitled to get Rs.4,500/- towards the head of loss of funeral expenses. After adding all the heading, the award comes to Rs.4,12,500/-.

The insurance company is directed to pay the compensation to the claimants along with 6% interest from the date of filing of the claim application i.e. on 4.5.2009.

It appears from the record that the insurance company had deposited the entire awarded amount to the office of the learned Registrar General, High Court, Calcutta amongst which the claimants have already withdrawn Rs.2,42,250/-. The deposit made by the insurance company must be carried some interests. The office of the learned Registrar General, High Court, Calcutta shall calculate the award passed by this Court along with interest and shall disburse the same in favour of the claimants less they have already received. After such payment if it appears that something is due to the claimants, then the insurance company is directed to pay the same within a period of eight weeks and after some payment if it appears that something is remaining in the account of the insurance company, the same be allowed to withdraw by the insurance company.

After such deposit is being made, the insurance company is at liberty to recover the compensation as ordered above from the owner of the offending vehicle according to law laid down by the Hon'ble Supreme Court in **Swaran Singh**.

Accordingly, FMA 1801 of 2014 is disposed of.

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.)