

24.07. 2023
item No.21
n.b.
ct. no. 551

FMA 4735 of 2015

with

IA CAN 1 of 2016(Old CAN No. 3229 of 2016)

Tahiruna Begum Sekh & Ors.

Vs.

National Insurance Co. Ltd. & Anr.

Mr. Ali Imam Shah,

... for the appellants.

Mr. M. Chakraborty,

Ms. Swarnali Biswas,

Ms. Ratnadipa Karmakar

.....for the respondent No.1.

The instant appeal has been preferred against the judgment dated April 15, 2015 passed by the learned Judge MAC Tribunal, 2nd Court, Burdwan in MAC case No. 35/65 of 2010.

The brief fact of the case is that the present claimants have preferred an application before the learned Tribunal under Section 163A of the Motor Vehicles Act for getting compensation on the ground that there predecessor died during the use of Motor vehicle.

The brief fact of the accident as stated in the application is as follows:

The deceased Asgar Ali @ Sagar Ali Sk. was the driver of the Truck bearing registration no. W.B.-03B/6617 and the dead body of the said driver was found inside the cabin of the said truck at Borjora. It is the case of the claimants that the driver i.e. deceased most

probably murdered during the course of use in the Motor vehicle thus they prayed for compensation.

The claim case was contested by the Insurance Company. Learned Tribunal heard the both parties after receiving the evidences passed the impugned judgment. The learned Tribunal has dismissed the claim case on the ground that the claimants may have their relief as per provisions of Workmen's Compensation Act 1906 but they are not entitled to get the relief in this case under Section 163A of the Motor Vehicles Act.

Learned advocate for the appellants/claimants submitted before this Court that the impugned judgment passed by the learned Tribunal is erroneous. Learned Tribunal has not appreciated the facts and circumstances of this case and come to an erroneous finding. He also pointed that the owner of the truck was deposed by the learned Tribunal as P.W. 2; more specifically pointed that the driver i.e. deceased died during the course of employment. The police indicate the dead body was found inside cabin of the truck. Thus, at the juncture, the user of motor vehicle is glaring. He also pointed that the learned Tribunal should have considered the law of the land in deciding the instant case. He also pointed that several authorities i.e. Hon'ble Supreme Court as well as Hon'ble High Courts on the self same set of facts has ordered that death of a driver during the use of the motor

vehicle is come under the purview of Section 163A of the Motor Vehicles Act. He prayed for just compensation.

Learned advocate appearing on behalf of the Insurance Company submitted before this Court that there are no illegality in the impugned judgment. Learned Tribunal has passed the order reasonably. Learned Tribunal has correctly pointed out that the claim of the appellants are within the ambit of Workmen's Compensation Act. He also pointed out the fact of the case to show, that the driver i.e. deceased not suffered any accident. Thus, the impugned judgment passed by the learned Tribunal is not at all perverse. He prayed dismissal for instant appeal.

Heard the learned advocates and perused the materials on record, it appears to me that after the death of the said driver inside the cabin of the truck, the Borjora P.S. U. D Case No.17 of 2007 dated 07.10.2007 was started on basis of the death report. The dead body was placed before the Autopsy Surgeon. Initially, the Autopsy Surgeon would not opined regarding the cause of death and the Visceras were forwarded for foreignsic examination. The foreignsic report was placed before the I.O and on the basis of the of which I.O. submitted the final report. Wherein it appears that no poison could be found or detected from the viscera of the dead body. Thus, it appears that the death of the deceased was caused under natural circumstances.

Learned advocate for the appellants cited a decision of the Hon'ble Supreme Court in **(2011) 2 WBLR(SC) 722(New India Assurance Co. Ltd. Vs. Yadu Sambhaji More & Ors.)** wherein more than 60 persons were died out of explosion when they were taking out the petrol after a petrol tanker met with an accident and larking thereof. On the cited case, the Hon'ble Supreme Court is of the view that the compensation under the Motor Vehicles Act is applicable as the death of cause after the accident of motor vehicle.

He also cited a decision reported in **2000 WBLR(SC) 330 (Smt. Rita Devi & Ors. Vs. New India Assurance Co. Ltd & Anr.)** wherein murder of a driver was caused while stealing the vehicle, the Hon'ble Supreme Court is of the view that such death is not murdered but accidental.

He also referred to a decision in **2009(3) T.A.C. 648 (Guj.) (National Insurance Company Vs. Gitaben Saitansing Rajput & Ors.)** wherein a driver of an offending track found in bleeding condition in the driver seat while returning from assignment, in that cited case the Hon'ble Gujarat High Court is of the opinion that such murder is not "murder simplicitor" but ancillary to the use of Motor Vehicles and "accidental in nature".

Learned advocate appearing for the appellant also cited several judgments showing a murder of the driver during the course of employment was considered by several High Court to be the death at the time of use of

Motor vehicle and in all cases, the High Court is of the opinion that Motor Vehicles Act is applicable.

The cases cited by the learned advocate for the appellant is quite different to present case in hand. In this case, there is no evidence that the driver i.e. the deceased was murdered by any person or there is no such report with the police. This Court is already observed that the death was caused naturally in this case. It is necessary to specify the statute i.e. Section 163A of M.V. Act.

“S. 163A. Special provisions as to payment of compensation on structured formula basis.- (1) *Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.*

Explanation. – For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923(8 of 1923)

(2) In any claim for compensation under sub-section(1), the claimant shall not be required to plead or establish that the death or permanent disablement in

respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view of cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

By a plain reading of Section 163A, it appears to me that the death or permanent disablement “due to accident” arising out of use of motor vehicles is necessary to substantiate a case under Section 163A of the M.V. Act. In this case, there is no such fact of accident. Thus, in my view the instant case is not maintainable under Section 163A.

Learned advocate for the appellants also submitted that under the provisions of Section 167 of the Motor Vehicles Act, the claimant can chose any of the forum i.e. the Workmen’s Compensation Act or M.V. Act to get the compensation. I have perused the provision, wherein the legislature has given an option to the claimant to choose any of either forum when the case come under the preview of both the forum.

I am of the view that the instant case is not come under the purview of Section 163A of the M.V. Act but the claimants are entitled to get relief under the Workmen’s Compensation Act, 1923 (Act VIII of 1923).

In perusing the impugned judgment and order, it appears to me that the learned Tribunal is of the view that

the instant case is not come under the purview of Section 163A of M.V. Act. I find no infirmity in the impugned judgment but the learned Tribunal must have guided the claimants to prefer appropriate forum.

In considering the same, I think it necessary to pass appropriate order for the purpose of appropriate relief to the claimants.

It appears that the claimants have preferred a wrong forum for getting compensation. Thus, they are at liberty to prefer an application according to the provisions of Workmen's Compensation Act. In preferring such application, the claimants shall not debar under the Law of Limitation as it was caused due to chose the wrong forum. They have proceeded deligently in good faith, hence they are entitled to relief according to the provisions of Section 14 of the Limitation Act, 1963 to file the appropriate application subject to the fact that the claimants shall prefer the application within eight weeks from the date passing of this order before the appropriate forum under the workmen's Compensation Act. The forum shall receive their application and dispose of the same early as possible.

Accordingly, FMA 4735 of 2015 is disposed of on the above observations.

All connected applications, if any, are also disposed of.

Lower Court Record be returned back immediately.

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

(Subhendu Samanta, J.)