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ct no. 13
Sl. No. 30
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F.M.A.T. (WC) 2 of 2023
With
I.A. No. CAN 1 of 2023
With
I.A. No. CAN 2 of 2023
New India Assurance Co. Ltd.
-Versus-
Shilpi Swarnakar & Ors.

Mr. Rajdeep Bhattacharya,
Ms. Adrija Bhattacharya

...for the appellant

CAN 1 of 2023

1. CAN 1 of 2023 has been filed seeking condonation of delay of 78 days.
2. Sufficient grounds have been made out in the instant application explaining such delay. Hence, the delay is condoned.
3. Accordingly, CAN 1 of 2023 is allowed and disposed of.

FMAT (WC) 2 of 2023

4. CAN 2 of 2023 is an application for stay of the judgment and order dated 2nd September, 2022 passed by the learned Commissioner, Employees' Compensation, Durgapur, West Bengal in Claim Case No. 10 of 2019. In fact the appeal being FMAT (WC) 2 of 2023 is directed against the said judgment and order dated 2nd September, 2022 in Claim Case No. 10 of 2019.
5. The brief facts relevant to the case are that one Manabendra Swarnakar while working as a Khalasi of a bus

bearing registration No. WB-39B/5184 sustained serious injury while the bus was reversing in the middle of the night on 30th November, 2018. He was taken to the hospital wherein he succumbed to his injuries. The deceased was 20 years old at the time of death.

6. The claim petition had been filed under the Employees' Compensation Act, 1923 for a sum of Rs. 8,96,000/- by the wife and father of the deceased. The O.P. No. 1, Jata Shankar Tiwary, was the owner of the vehicle did not contest the proceedings. The O.P. No. 2 is the appellant/New India Assurance Co. Ltd. filed written statement.

7. Based on the pleadings the Court below framed the following issues,

- (1) Is the case maintainable in its present form and law?
- (2) Was there was any accident arising out of and in course of the deceased employee's alleged employment as khalashi on the bus bearing registration no. WB-39B/5184 of and under the O.P. No. 1?
- (3) Did the deceased employee Manabendra Swarnakar die as a result of alleged personal injuries sustained in the alleged accident?
- (4) What were the actual age and monthly wages of deceased employee?
- (5) Is the Insurance Co. (O.P. No. 2) liable to pay any compensation?
- (6) Are the applicants entitled to get the relief as prayed for?
- (7) To what other relief/s the applicants are entitled?

8. PW/1 was the father of the deceased. On behalf of Insurance Company, one Firoze Khan deposed as OPW.

9. The Court below received an exhibited certified copy of the FIR being Hansdiha P.S. Case No. 117 of 2018 dated 9th December, 2018- (Exhibit/1). A certified copy of charge sheet – (Exhibit/2). Certified copy of the postmortem report- (Exhibit/3). R.C. book of the bus- (Exhibit/4). Tax token of the bus- (Exhibit/5). The Insurance policy issued by the appellant- (Exhibit/6) and the Aadhaar Card of the deceased – (Exhibit/7).

10. The Court below found on the basis of the FIR, charge sheet and the statements of the brother of the deceased before the police, that the deceased was working as a khalashi of the bus in question. The bus was being driven by Jaba Choubey. The accident occurred at Hansdiha Rotary near Hansdiha under Hansdiha P.S., Dumka district within the district- Jharkhand.

11. The appellant/OP No. 2 tried to establish that the deceased was not working as a khalashi of the bus at the relevant point of time. Reliance was placed on a trade licence issued in the name of the deceased running a two wheeler repair shop.

12. The Court below was of the view that mere production of a trade licence in the name of the deceased would not throw out the evidence that the deceased was working as a khalashi of the bus.

13. This Court is also of the view that merely because of a person possessing a trade licence as a two wheeler repairer would not ipso facto disentitle him to work as a khalasi of a bus. It is quite possible that the deceased was working as a

khalashi, to supplement his income, if at all, he was engaged in the business of scooter repair.

14. The appellant has not been able to establish through any other evidence that the deceased was not working as a khalashi. The evidence of PW/1, the father of the deceased remains uncontroverted. The fact is also established on the basis of the police records. The findings of the Court below therefore against the issue nos. 1, 2 and 3 based on the evidence that has come on record, are therefore sustainable.

15. The next argument of the appellant in the Court below was that the driver did not have a valid driving licence and the vehicle did not have valid papers. The Court below has rightly found that the defences under Sections 147 and 149 of the Motor Vehicles Act, 1988, are not available in a proceeding under the Workmen Compensation Act, 1923. The appellant has also failed to substantiate the evidence of OPW and one Bhobel Choubey who was the actual driver of the bus at the relevant point of time. Bhobel Choubey was not produced as a witness by the Insurance Company. There is no other evidence to support the stand of the appellant in this regard.

16. In respect of issue no. 4, the Court came to the conclusion that on the basis of Aadhaar Card of the deceased that he was 20+ years of age. 222.71 was the applicable multiplier as per the schedule IV to the Act of 1923,. The minimum wages of a driver was found as per Government notification to be Rs. 7307/- per month. Based on the above, the wages of the khalashi was found to be 50% of the applicable wages of a driver.

17. Against issue nos. 5 and 7, the Court below further found by reference to several decisions of the Supreme Court, inter alia, in the case of ***Ved Prakash Garg Vs. Premi Devi*** reported in ***AIR 1997 SC 3854*** that since no compensation was paid by any of the OPs under Section 4 within the period specified under Section 4A(1) of the Act of 1923, interest @12% on the compensation amount was awarded.

18. This Court finds that the application of 12% interest of the compensation amount is in accordance with Section 4 and 4A(1) of the Act of 1923 and the decisions relied upon by the Court below.

19. In those circumstances, the compensation of Rs. 8,13,670/- together with simple interest @12% per annum from the date of accident, i.e., 30th November, 2018 are just and legal and wholly supported in law and fact.

20. In those circumstances, this Court finds no merit in FMAT (WC) 2 of 2023. There are no substantial questions of law found.

21. Hence, FMAT (WC) 2 of 2023 shall stand dismissed. The amount of Rs. 12,27,177/- already deposited by the appellant with the Court below, shall be paid to the claimants in the Court below, within a period of one month from the date of receipt of a copy of this order together with any accrued interest as on date. The proportionate share of the Claimant Nos. 1 and 2 shall be decided by the Court below and paid into their respective Bank accounts.

22. In view of the above, CAN 2 of 2023 shall stand dismissed.

23. There shall be no order as to costs.
24. The Registry and the appellant shall communicate this order to the Court below.
25. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)