

(2012) 03 GAU CK 0022
In the Gauhati High Court
Case No : MFA (WC) No. 30 of 2004

State of Tripura and Others	Vs	APPELLANT
Joydeb Lodh and Others		RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(30)
Workmens Compensation Act, 1923 — Section 30, 4, 4A

Citation : (2012) 135 FLR 181 : (2012) 2 GLD 572 : (2012) 3 GLT 256

Hon'ble Judges : Swapan Chandra Das, J

Bench : Single Bench

Advocate : Supriya Chakraborty, Addl. GA, for the Appellant; S.K. Datta and Mr. P. Gautam, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J

1. This appeal, u/s 30 of Workmen's Compensation Act, 1933, is directed against the judgment & award, dated 26.07.2004, passed by the Commissioner, Workmen's Compensation, West Tripura, Agartala, in Case No.TS.(WC)39 of 2001. Heard learned Additional Government Advocate, Mr. Supriya Chakraborty for the appellants. Also heard learned Mr. S K Datta for the respdt. No. 1 as well as learned counsel, Mr. P. Gautam for the respdt. No. 3.

2. None appeared for the respdt. No. 2

3. The fact, in short, necessary for disposal of this appeal, may be stated thus:

Respdt. No. 1, was employed by the respdt. No. 2 as Driver of vehicle No. WB 02A-2109 and that vehicle was leased out to Electrical Department to the Government of Tripura belonged to the State-appellants and on 21.07.2001, respdt. No. 1, the claimant-petitioner, while driving the vehicle with appellant No. 3 and other Electrical Engineers of the department it met an accident on the way at about 9.45 AM near Sarkar Tilta on Belonia - Hrishyamukh road, since another

vehicle bearing No.TR-03-2005 collided with the vehicle and as a result, respdt. No. 1 (the claimant-petitioner) sustained severe fracture injury in his both legs. He presented the claim case under Sections 4 and 4-A of the Workmen's Compensation Act before the Commissioner, Workman's Compensation, Agartala praying for awarding him compensation of Rs. 5,00,000/- for the permanent disability suffered by him due to the accident, arising out of and in the course of his employment, as driver of the vehicle, under the respdt. No. 2 The Commissioner, Workmen's Compensation, on conclusion of the trial, allowed the petition and awarded compensation of Rs. 3,27,705 with interest thereon and directed the present appellants to make payment of the compensation.

4. The appeal is filed challenging the award only on the ground that the vehicle had a valid insurance on the date of accident covering the risk and so the respdt. No. 3, Oriental Insurance Company was responsible to make payment of the compensation but the Tribunal wrongly directed the appellants to make payment of the same.

5. Learned Additional Government Advocate, Mr. Chakraborty, has submitted that there is no dispute that the claimant-petitioner was the driver of the vehicle on the date of accident, engaged by the owner of the vehicle i.e. the respdt. No. 2 and that the vehicle was insured with Oriental insurance Company covering the risk on the date of accident. So the insurance company should be held responsible to make payment of the compensation to the claimant-petitioner.

On the other hand, appearing on behalf of respdt. No. 3, Oriental Insurance Company, learned counsel, Mr. P. Gautam refuting the argument submitted that there was no contract of insurance between the appellants and the respdt. Insurance Company regarding the vehicle and its driver.

6. Admittedly, the vehicle was leased out to the use of the appellants by the respdt. No. 2 the owner of the vehicle and while under their control and possession it met the accident and so, liability is on them to make the payment since the appellants were the owner of the vehicle for all intends and purposes at the relevant point of time of accident being the vehicle was on lease in their possession and control and the petitioner was performing duty under them.

He strongly relied on the decision of the Hon'ble Apex Court in the case of National Insurance Company Ltd. Vs Deepa Devi & Ors. reported in 2007 AIR SCW 7882.

In that reported case the Maruti Gypsy vehicle belonged to a private respdt. was requisitioned by Sub-Divisional Magistrate (SDM) for the purpose of Assembly Election and while the vehicle was on use by the SDM it met an accident and a boy died due to that accident. The vehicle was insured with the National Insurance Company covering the risk on the date of the accident pursuant to an insurance policy between the owner of the vehicle and the said insurance company. The insurance company had taken the plea that the vehicle since was under possession and control of the State-respdt., insurance company cannot be

held responsible for making payment pursuant to a contract between the Insurance Company and the owner of the vehicle. The Tribunal, accepting the plea of the insurance company, held the State-respdt. responsible for making payment of compensation which was challenged before the High Court and the High Court directed insurance company to make payment of compensation. That judgment was challenged before the Apex Court and the Apex Court held that in the given facts and circumstances of the case the State shall be liable to pay the compensation in view of the fact the State was the owner of the vehicle as defined in Section 2 (30) of the Motor Vehicles Act, 1988.

7. The word "Owner" has been defined in Section 2(30) of the Motor Vehicles Act thus:

Owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement

8. In the present case, it is an undisputed rather an admitted fact that the petitioner was engaged, as driver of the vehicle, by the owner i.e. respdt. No. 2 and the vehicle was leased out to the appellants and when the accident was occurred the vehicle was under the active control of the appellant. So for all practical purposes, as defined in Section 2(30) of the Act, the respondents were the owner of the vehicle in respect of its use was concerned. Under such circumstances the Tribunal rightly held that the appellants were responsible to make payment of the compensation. The ratio of the decision of the Deepa Devi (supra) is applicable in the facts and circumstances of the case and the argument advanced by the learned Additional Government Advocate, therefore, has got no merit at all. Learned Additional Government Advocate argued on no other point before this Court and hence the appeal stands dismissed but in the circumstances without cost.