

ADMINISTRATOR, B.S.R.T.C.

v.

RANJANA MAJHI AND ORS.

JULY 17, 2006

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Motor Vehicles Act, 1980—Section 166—Compensation—Two parties directed to pay awarded amount in equal shares—First party challenging the award directed by High Court to pay the entire amount awarded without indicating any reasons—Correctness of—Held: Second party did not challenge the direction to pay 50% of amount awarded, in essence accepted the directions, thus High Court could not make out a new case by directing the first party to pay the entire amount as compensation—Thus, amount awarded to be paid equally by both the parties.

An accident resulted in the death of B in which vehicles belonging to the appellant-Corporation and respondent no. 3-police department were involved. Tribunal disposed of the claim petitions, directing the amount awarded to be paid in equal shares by the Corporation and the Police Department. Appellant filed an appeal questioning the correctness of award. High Court upheld the award but directed the entire amount awarded to be paid by the appellant. Hence the present appeal.

Partly allowing the appeal, the Court

HELD: There was no challenge by respondent No. 3-Police Department questioning correctness of the direction given by the Tribunal that he was liable to pay 50% of the amount awarded, as such the High Court could not have directed that the appellant was to pay the whole amount awarded as compensation. High Court could not have made out a new case to direct payment of the whole amount awarded by the Tribunal. High Court on its own passed such directions and did not indicate any reason for the same. Appellant-Corporation questioned correctness of the view expressed by the Tribunal regarding the quantum. Respondent No. 3 had not preferred an appeal and in essence accepted the direction that he was liable to pay 50% of the awarded amount. The amount awarded is to be equally paid by the appellant and

A respondent No. 3. [629-F-H; 630-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3000 of 2006.

From the Judgment and Order dated 11.4.2003 of the High Court of Calcutta in F.M.A. No. 1178/2000.

B Irshard Ahmad for the Appellant.

Rana S. Biswas, Sarla Chandra, Avijit Bhattacharjee, Bikash Kar Gupta and Saumya Kundu for the Respondent.

C The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

D Challenge in this appeal is to the legality of the judgment rendered by a Division Bench of the Calcutta High Court. By the impugned judgment the High Court directed that the amount of compensation awarded by the 4th Court of Motor Accidents Claims Tribunal/Additional District Judge Burdwan (in short the 'Tribunal') was to be paid by the appellant.

Background facts in a nutshell is as follows:

E Two Claim applications were disposed of by the Tribunal. In the accident resulting in the death of Basudev Majhi two vehicles were involved, one belonging to the appellant Corporation while the other one belonged to the police department of West Bengal. The Tribunal after considering the evidence on record directed, *inter alia*, as follows :-

F “That the application under section 166 of the M.V. Act is allowed no contest against the contesting O.Ps. 1 and 2 and *ex parte* against the rest but without cost in the facts and circumstances of the case. The petitioners do get an award of Rs.2,30,400/-. *The O.P. the Superintendent of the Police, Burdwan, in respect of Police Jeep No. WBP-2655 and the Chairman-cum-Managing Director, B.S.R.T.C. are directed to pay the awarded sum of Rs. 2,30,400/- in equal shares i.e. Rs. 1,15,200/- each to the petitioners in the following manner within two months from the days of the order failing which the petitioners are entitled to get an interest @ 12% p.a. till realization of the full amount.*”

H (Underlined for emphasis)

Tribunal disposed of the Claim Petition lodged in terms of Section 166 of the Motor Vehicles Act, 1988 (in short the 'Act').

Appellant questioned correctness of the Tribunal's judgment before the High Court by filing an appeal. As noted above, Claim Petitions relating to the same accident were adjudicated. One of the two appeals filed was FMA No. 1178 of 2002 which forms the subject matter of dispute in the present Appeal.

The High Court in essence upheld the Award made by the Tribunal, but directed that the entire amount awarded was to be paid by the appellant.

In support of the appeal, learned counsel for the appellant-Corporation submitted that the Corporation had questioned correctness of the Award. The Superintendent of Police Burdwan, who was one of the respondents in the Claim Petition, did not prefer any appeal. In other words, he accepted his liability to pay 50% of the awarded amount in terms of the Tribunal's direction. No appeal having been preferred by the said respondent-Superintendent of Police, Burdwan the High Court could not have directed that the appellant was to pay the whole compensation amount awarded. No reason has been indicated as to why the High Court thought that the Superintendent of Police, Burdwan did not have any liability.

In response, learned counsel for the respondent-Superintendent of Police, Burdwan submitted that the High Court has analysed the factual position and has come to hold that the appellant alone was responsible. It is, however, accepted that no appeal was preferred questioning correctness of the direction that 50% of the amount awarded was to be paid by the Superintendent of Police, Burdwan.

We find substance in the plea of learned counsel for the appellant that since there was no challenge by the respondent No. 3 questioning correctness of the direction given by the Tribunal that he was liable to pay 50% of the amount awarded, the High Court could not have directed that the appellant was to pay the entire amount. Appellant-Corporation questioned correctness of the view expressed by the Tribunal regarding the quantum. The High Court could not have made out a new case to direct payment of the whole amount awarded by the Tribunal. Respondent No. 3 had not preferred an appeal and in essence accepted the direction that he was liable to pay 50% of the awarded amount. The High Court on its own directed that appellant was liable to pay the whole amount awarded as compensation. The High Court has not

A indicated any reason for directing the appellant to pay the whole amount awarded. To that extent the appeal deserves to be allowed. The amount awarded shall be equally paid by the appellant and the respondent No. 3-Superintendent of Police-Burdwan as directed by the Tribunal.

Appeal is allowed to the aforesaid extent. No costs.

B

N.J.

Appeal partly allowed.