

CASE NO.:
Appeal (civil) 3000 of 2006

PETITIONER:
Administrator, B.S.R.T.C.

RESPONDENT:
Ranjana Majhi & Ors.

DATE OF JUDGMENT: 17/07/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 20744 of 2003)

ARIJIT PASAYAT, J.

Leave granted.

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:

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 :-

"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."

(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 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.