

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

A

V.

RANJANA MAJHI AND ORS .

JULY 17 , 2006

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA , JJ .]

B

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 .

D .

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- G 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. G 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 A 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 that~~ ^B 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 .

F

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 .