

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M. A. No. 160 of 2010

Birendra Prasad Roy **Appellant**
Versus

1. Yogeshwar Mirdha
2. The Vice President, M/s Ingersoll Rand (India) Ltd.
3. The Executive Engineer, Drilling Water and Sanitation Mechanical Division, PHED, Dumka
4. United India Insurance Company Ltd., Deoghar

..... **Respondents**

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mr. Sanjeev Thakur, Advocate
For the Respondents : Mr. Harendra Kr. Singh, Advocate

C.A.V. ON 25 .03.2022

PRONOUNCED ON 10 / 05 / 2022

1. The driver of the offending vehicle has preferred the instant appeal against the judgment and award of compensation in MACT Case No.12/2008 for the death of Nisha Devi in a motor vehicle accident caused by one ITM-10-Rig machine bearing Registration No. KA-02M-4086 of the Drilling Water and Sanitation Mechanical Division, PHED Dumka.
2. On 09.03.2005 the drilling machine of the PHED Department Dumka rammed into the house of the deceased resulting in its collapse and death of occupant Nisha Devi.
3. The learned Tribunal awarded compensation of Rs.75,000/- to be paid to her son Yogeshwar Mirdha under Section 163A of the Motor Vehicle Act on a notional income of Rs.15,000/- per annum. Since the deceased was 65 years old woman a multiplier of 5 was taken. The vehicle was not insured at the relevant time of the accident, and the liability to pay the compensation amount was fixed on the Sanitation Department, PHED, Dumka and the driver of the offending vehicle jointly and severally.
4. This appeal has been preferred firstly, on the ground that the claim Tribunal had no jurisdiction to pass the judgment and award in the instant case. Secondly, the 2nd party being an authority within the meaning of 'State' under Article 12 of the Constitution of India, it was not the driver but the department which was liable to pay the compensation amount.

5. The first ground is without any basis and no reason has been assigned as to how the Tribunal passing the Judgment and Award had no jurisdiction. The Motor Accident Claims Tribunal and Additional Motor Accident Claims are constituted by the State Govt. under Section 165 of the Motor Vehicle Act, 1988. The question of jurisdiction was neither raised before the Tribunal nor any issue was framed regarding it.

6. It has been held in *State of Maharashtra v. Kanchanmala Vijaysing Shirke, (1995) 5 SCC 659* that liability of the department depends on the fact whether the accident took place when the vehicle was being used during the course of employment.

“19. The crucial test is whether the initial act of the employee was expressly authorised and lawful. The employer, as in the present case the State Government, shall nevertheless be responsible for the manner in which the employee, that is, the driver and the respondent executed the authority. This is necessary to ensure so that the injured third parties who are not directly involved or concerned with the nature of authority vested by the master to his servant are not deprived from getting compensation. If the dispute revolves around the mode or manner of execution of the authority of the master by the servant, the master cannot escape the liability so far third parties are concerned on the ground that he had not actually authorised the particular manner in which the act was done. In the present case, it has been established beyond doubt that the driver of the vehicle had been fully authorised to drive the jeep for a purpose connected with the affairs of the State and the dispute is only in respect of the manner and the mode in which the said driver performed his duties by allowing another employee of the State Government, who was also going on an official duty, to drive the jeep, when the accident took place. Once it is established that negligent act of the driver and respondent was “in the course of employment”, the appellant-State shall be liable for the same”.

7. It is an admitted position that the vehicle was owned by the Govt. department used for drilling deep borings. There is nothing on record to show that vehicle was being used by the driver for private purpose. The instant appeal reflects a sorry state of affair where instead of satisfying the award of compensation the litigation has been dragged to this Court without any sound or reasonable ground. The Award was jointly

and severally against both the appellant who was the driver of the vehicle and the PHED department. No appeal has been preferred by the Department, therefore, it was incumbent on the part of it to have satisfied the award and to have proceeded against the driver as per law for any breach of terms and condition of the employment.

Under the aforesaid facts and circumstances, the appeal stands dismissed.

The PHED Department, Dumka is directed to satisfy the award of compensation within a month of this order by paying the amount to the Tribunal, failing which the Tribunal shall be at liberty to proceed according to law for realizing the amount. The compensation amount to be disbursed to the claimants after their proper identification.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated the 10th May, 2022

AFR / AKT