

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 1st November, 2011
Pronounced on: 31st January, 2012*

+ **MAC. APP. 226/2009**

VED PRAKASH & ANR Appellants
Through: Mr. Mohit Gupta with
Ms. Vidhi Gupta, Advocates

Versus

DARSHAN SINGH & ORS Respondents
Through: Ms. Neerja Sachdeva, Advocate
for Respondent No.2

**CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL**

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant who is father of deceased Sanjay Kumar impugns a judgment dated 05.12.2008 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) by which an application under Section 163-A of the Motor Vehicles Act preferred by the Appellant for award of compensation was dismissed.

2. It is alleged that on 15.07.2005, the deceased was driving the tempo bearing registration No.DL-1LD 7050. At about 3:00 AM, when he reached near Hari Petrol Pump, Police Station Vrindawan, Distt, Mathura the tempo collided with an unknown stationary truck. Sanjay Kumar died at the spot. The Appellants who are the deceased's parents sought a compensation of ₹5 lakh. The deceased's son Nitin Kumar was impleaded as Respondent No.3. The Tribunal relied upon ***HDFC Chubb General Insurance Company v. Smt Shanti Devi Rajbal Singh Thakur & Anr***, and held that since the Appellant was not a third party, he was not entitled to any compensation from the owner and the insurer of his own vehicle when he himself was at fault.
3. Their cannot any dispute about the proposition of law that the claim petition under Section 163-A of the Motor Vehicles Act is not maintainable against his own employer and owner of the offending vehicle and the insurance company. (***Ningamma & Anr. v. United India Insurance Company Limited, (2009) 13 SCC 710*** and ***National Insurance Company Limited v. Sinitha & Ors., 011 (13) SCALE 84***. Similar view was taken by the Punjab and Haryana High Court in FAO No.1413/2000 titled ***General Manager, Chandigarh Transport Undertaking-I, Chandigarh & Anr v. Kanwaljit Kaur & Ors.***, decided on 09.05.2011.

4. The insurance policy Ex.R2W1/1 was proved by the Respondent insurance company which shows that the Appellants claimants were covered under the Workmen's Compensation Act, 1923 by paying additional premium of ₹50/-.
5. The Respondents/Claimants must have prosecuted a Claim Petition under Section 4 of the Workmen's Compensation Act, 1923 (the Act of 1923) for death of a workman before the Commissioner, Workman's Compensation.
6. This Court being a Court of Appeal under Section 30 of the Act of 1923, can itself compute the compensation and award it to the Respondents Claimants instead of relegating them to approach the Commissioner appointed under the Act of 1923. I am supported in this view by ***Kanwaljit Kaur & Others***(supra).
7. As per Section 4 of the Act of 1923, in case of death resulting from injury arising out of an employment, the compensation payable is an amount equal to 50% of the monthly wages of the deceased workman, multiplied by the relevant factor (as mentioned in Schedule 4 of the Act of 1923).
8. The Appellant as PW1 deposed that the deceased was getting a salary of ₹3200/- per month which was not disputed in cross-examination. The deceased was aged 32 years. Thus, the compensation payable at the age of 32 years comes to ₹ 3,26,160/- $(3200/2 \times 203.85)$.

9. I hereby award a compensation of ₹3,26,160/- along with interest @ 7.5% per annum from the date of the filing of the petition till the date of payment.
10. A sum of ₹ 50,000/- along with proportionate interest shall be payable to the first and the second Appellant; rest of the amount along with interest shall be payable to the Respondent No.3.
11. 50% of the awarded amount to the Appellants shall be held in fixed deposit for a period of three years. Rest of the amount shall be released to them forthwith. The amount awarded to Respondent No.3 shall be held in fixed deposit through the first Appellant in UCO Bank, Delhi High Court Branch till he attains the age of 21 years.
12. The Appeal is allowed in above terms. No costs.

(G.P. MITTAL)
JUDGE

JANUARY 31, 2012
pst