
(1997) 11 AP CK 0064
In the Andhra Pradesh High Court
Case No : L.P.A. No. 2 of 1995

APSRTC, Ongole

APPELLANT

Vs

Shaik Aneela Begum and Others

RESPONDENT

Date of Decision : 25-11-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 110(AA), 110A, 110F, 92(A), 92D
Workmens Compensation Act, 1923 — Section 19, 19(2), 20, 3, 3(5)

Citation : (1998) 2 ACC 54 : (1999) ACJ 1383 : (1998) 1 ALD 229 : (1998) 2 ALT 246

Hon'ble Judges : S. Parvatha Rao, J;A.S. Bhate, J

Bench : Division Bench

Advocate : Mr. C.V. Ramulu, SC for APSRTC, for the Appellant; Mr. S. Hanumaiah, SC for Insurance Company and Mr. T. Bal Reddy, for the Respondent

Judgement

S. Parvatha Rao, J.—The Andhra Pradesh State Road Transport Corporation, the appellant herein, questions the judgment of the learned single Judge dated 21-7-1994 partly allowing C.M.A.No.384 of 1988 preferred by the Respondents 1 to 6 herein/ claimants against the award of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Ongole in O.P.No. 261 of 1984 dated 27-2-1986.

2. The claimants are the legal representatives of the deceased Shaik Kalesha. He died in an accident that occurred on 2-5-1984 about 10 am. while driving a bus bearing registration No.AAZ 3464 belonging to the appellant-Corporation. It was a head on collision between that bus and a lorry bearing registration No.MDY 8883 coming from the opposite direction resulting in the deaths also of three other persons including the driver and cleaner of the lorry. Shaik Kalesha was 30 years old when he died and was employed as driver in the appellant-Corporation drawing a salary of more than Rs.600/- per month. He left behind his seventh month pregnant wife aged 23 years, 3 minor daughters aged 4 years, 2 years and 6 months, mother aged 45 years and unmarried sister aged 19 years, who sought compensation totalling Rs.60,000/- for his death in O.P.No.261 of 1984 u/s 110A and 92A of the Motor Vehicles Act, 1939 ("the M.V. Act" for short).

3. The claims Tribunal found that the accident involving head on collision between the bus and the lorry occurred due to the negligence of the drivers of both the vehicles in equal proportion and consequently apportioned in equal parts the compensation of Rs.54,000/- towards loss of earnings and Rs,4,000/- towards loss of consortium to the widow awarded by him. On that basis the Claims Tribunal held that the claimants would be entitled to only half of Rs.58,000/- from the owner of the lorry and its insurer, Respondents 7 and 8 in the L.P.A/Respondents 2 and 3 in the C.M.A. and in the O.P. respectively. On the finding that the deceased Shaik Kalesha was himself equally negligent in causing the accident, the Claims Tribunal held that no compensation could be awarded to his legal representatives against the appellant because there could be no vicarious liability of the appellant-Corporation, the owner of the bus, in that regard.

4. The learned single Judge rejected the claim of the appellants before him (claimants) for enhancing compensation. He also upheld the decision of the Claims Tribunal denying 50 per cent of the compensation awarded on the ground that the deceased himself was negligent to the extent of 50 per cent and therefore no compensation could be awarded to his legal representatives in respect of his own wrong. But, relying on the judgment of a Division Bench of the Kerala High Court in *K.R. Visalakshi v. Pookodan Hamaza*, 1989 ACJ 600 = AJR19S9 Kerala 192 the learned single Judge held that from a reading of the provisions of the M.V. Act it was clear that there was no prohibition for applying the principles under the Workmen's Compensation Act, 1923 ("the W.C.Act" for short) if such benefit could be given in the case of a particular workman under the W.C. Act and that therefore the Claims Tribunal could award compensation to which the claimants would be entitled under the W.C. Act subject to the rider that the compensation should not be more than that payable by the employer under the W.C.Act. On that basis the learned single Judge held that the appellant-Corporation had to share the liability as the owner of the bus AAZ 3464 in its capacity as employer as per the provisions of the W.C.Act and that it would be in the interests of justice and equity to limit the liability of the appellant-Corporation to the extent of the balance amount of Rs.29,000/- awarded by the Claims Tribunal. In arriving at this conclusion, the learned single Judge took into consideration the fact that Section 3 of the W.C.Act disentitled the workman to receive any compensation under the W.C.Act only on the grounds set out in the proviso to Section 3 and that the W.C.Act provided for strict and limited liability on the employer and that if the claimants invoked its provisions, they would have been entitled to Rs.49,680/-from the appellant-Corporation as employer of the deceased. In that view, the learned single Judge partly allowed the C.M A holding that the claimants were entitled to Rs.29,000/ - from the appellant-Corporation. This part of the decision of the learned single Judge is questioned before us by the appellant-Corporation

5. The claimants, i.e.. Respondents 1 to 6 before us, did not question the finding of the Claims Tribunal to the extent it was upheld by the learned single Judge,

i.e., that the deceased Shaik Kalesha was himself equally negligent and responsible for the accident and therefore no compensation could be awarded to his legal representatives on the basis of such negligence in tort. Therefore, the only question that arises for consideration in this appeal is whether the Claims Tribunal set up under the M.V. Act can award compensation which the appellant-Corporation is liable to pay under Sections of the W.C.Act to the claimants and in respect of which the Commissioner for Women's Compensation appointed u/s 20 of that Act may entertain and decide any claim.

6. The learned Counsel for the appellant-Corporation submits that the Claims Tribunal has no jurisdiction to award such compensation and that the learned single Judge erred in awarding that compensation to the claimants. The learned Counsel also submits that the decision of the Kerala High Court in K.R Visalakshi (supra) is not correct and ought not to have been followed by the learned single Judge.

7. In K.R. Visalakshi's case (supra) also the accident resulted from a collision between two vehicles, a contract carriage and a stage carriage. The driver of the stage carriage claimed compensation for the injury sustained by him from the owner, driver and insurer of the contract carriage claiming that the accident occurred due to the negligence on the part of the driver of the contract carriage. He also impleaded the owner and insurer of the stage carriage as respondents. The Claims Tribunal held that the accident occurred due to the negligence on the part of the driver of the contract carriage only and awarded compensation making the owner, driver and insurer of the contract carriage jointly liable to pay the same. The owner and insurer of the contract carriage preferred an appeal before the Kerala High Court questioning the same. The Kerala High Court considering the evidence on record and differing from the view taken by the Claims Tribunal, held that the accident occurred due to the rashness and negligence of the drivers of both the vehicles. Counsel for the appellants i.e., owner and insurer of the contract carriage, contended that the driver of the stage carriage, in that event, could not claim any compensation from the insurer of that vehicle, because that part of the award against that insurer would be compensation for the negligence of the claimant himself. That contention was rejected on merits also as follows:

"Assuming that the appellant can raise this ground, we are not inclined to agree with him. The driver having met with an accident and suffered injuries during the course of his employment, albeit due to his negligence is entitled to claim compensation under the Workmen's Compensation Act. The insurer has statutory duty to cover the liability of the owner of the vehicle to pay such compensation. Section 110AA of the M.V.Act gives an option to the injured employee to raise his claim either under the Motor Vehicles or the Workmen's Compensation Act. If he had filed the claim under the latter statute, he could not have been denied compensation for the reason that he was himself negligent. The only inquiry would have been whether the accident occurred out of and in

the course of employment. Before the alternative forum also, he must be entitled to enforce the same claim on the same grounds and the same standard.

There was no discussion in support of the conclusion that before the Claims Tribunal under the M.V. Act the claimants would be entitled to enforce the claim under the W.C. Act on the same grounds and the same standard.

8. In *Shashi Devi Vs. Mohd. Ahsan and Others*, , a Division Bench of the Allahabad High Court held that when the Claims Tribunal under the M.V. Act was approached, it was not open to it to determine the amount of compensation by placing reliance upon the provisions of the W.C. Act. That was on the basis of Section 110AA of the M.V. Act which provided as follows:

"110AA. Option regarding claims for compensation in certain cases :-- Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923), where the death of or bodily injury to any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation (may without prejudice to the provisions of Chapter VII-A claim such compensation) under either of those Acts but not under both."

9. We have to notice that the compensation payable under the M. V. Act is on the basis of negligence and the liability is on the basis of tort. The principles applicable are of common law and there is only a change in the forum i.e., Claims Tribunal instead of Civil Court *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, . The only exception is that introduced u/s 92A introducing compensation in certain cases on the principle of no-fault which had also been incorporated into the W.C. Act u/s 92D of the M.V. Act. Compensation payable under the W.C. Act is on the basis of strict liability imposed by statute. The option u/s 110AA of the M.V. Act lies with the claimant to choose one or the other forums, as held by a Division Bench of this Court in *Oriental Fire and General Insurance Co. v. Union of India*, AIR 1975 AP 222. Sub-section (2) of Section 19 of the W.C. Act provides that "no civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act"". The Claims Tribunal comes in the place of a civil Court and by virtue of Section 110F of the M.V. Act "where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court". Therefore, for the purposes of Section 19(2) of the W.C. Act the Claims Tribunal must be deemed to be a Civil Court. A Division Bench of the Karnataka High Court has taken the same view in *Yellubai Torappa Kadam v. M/s. Mujawar and Co.* 1973 ACJ 242, dealing with sub-section (5) of Section 3 of the W.C. Act the same principle would apply in the case of sub-section (2) of Section 19 of the W.C. Act as well.

Otherwise, anomalous position would result; where Claims Tribunals are constituted, Section 19(2) of the W.C.Act would not operate; and in other places Civil Court should be barred.

10. In the result, we have to hold that the Claims Tribunal cannot enquire into the compensation that can be claimed and be awarded under the W.C. Act on the basis of statutorily imposed strict liability under the W.C. Act de hors negligence. In *Suresh Chandra Vs. State of U.P. and Another*, the Supreme Court held as follows:

"For reducing the amount of compensation from Rs.85,000/- (from Rs. 1,45,000/- on negligence basis) the High Court has accepted the contention advanced on behalf of the respondents herein (appellate before it) that the claimant would have secured only Rs.85,000/- by way of compensation if he had moved the Commissioner of Workmen's Compensation. We do not think that the High Court was right in accepting that reasoning on the facts of this case when the finding is that the accident had occasioned while the road-roller was on the move and the negligence was on the part of the person who drove the road-roller belonging to the respondents."

These observations of the Supreme Court support our view - the compensation in the present case is sought to be enhanced relying on the W.C. Act. We are not inclined to agree with the observations of the Division Bench of Kerala High Court in *K.R. Visalakshi 's case* (supra). The learned single Judge is not right in relying upon those observations of the Kerala High Court and in holding that the claimant should get the balance of compensation notwithstanding his own contributory negligence. As held by the Supreme Court in *Shanti Misra's case* (supra) the M.V. Act did not create a new right or even a new remedy; it only simply changed the forum and the process for adjudicating the claims for compensation arising from motor accidents on the basis of law of torts.

11. The judgment of the learned single Judge in AAO. No. 384 of 1988 dated 21-7-1994 is set aside. The L.P.A. is accordingly allowed. No costs.