
(2003) 07 RAJ CK 0125

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 465 of 2003

Geeta Devi and Others (Smt.)

APPELLANT

Vs

Shiv Shankar and Another

RESPONDENT

Date of Decision : 21-07-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 165, 167
Workmens Compensation Act, 1923 — Section 3

Citation : (2004) 1 ACC 804 : (2005) ACJ 803 : (2004) 1 RCR(Civil) 2 : (2004) 2 RLW 1169 : (2004) 1 WLC 177

Hon'ble Judges : N.P. Gupta, J

Bench : Single Bench

Advocate : Sandeep Saruparia, for the Appellant;

Final Decision : Dismissed

Judgement

N.P. Gupta, J.—This appeal has been filed against the award of the Workmen Compensation Commissioner, refusing the appellants' application filed u/s 140 of the Motor Vehicle Act, in a claim filed by the claimants, under the Workmen Compensation Act.

2. According to the averments of the claim, the deceased was employed as Khalasi on the truck, on the fateful day, the truck was parked in RIICO Area for being unloaded. At that time, it is alleged that after alighting from the truck, the deceased vomited blood, and died. It is, on the basis of this sequence of events, that the claim petition was filed, and the provisions of Section 140 are sought to be invoked.

3. For deciding the question about applicability of Section 140, I may gainfully quote the relevant part of Section 140, being Section 140 which reads as under:-

"(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly

and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section."

4. A perusal of the above section shows, that it attracts the liability for payment of compensation on the owners of the motor vehicle or motor vehicles as the case may be in the event of death or permanent disablement resulting "from an accident arising out of the use of a motor vehicle or motor vehicles",

5. A proper comprehension of the scheme of things, comprised in Chapter XII of the Motor Vehicles Act, shows that thereunder, u/s 165, the Claims Tribunals are established for the purpose of adjudicating claims for compensation, in respect of accidents involving death or bodily injury to the persons "arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both". Then Section 166 provides for making application. It is in this sequence that Section 167 gives an option to the claimants, by providing that notwithstanding anything contained in the Workmen's Compensation Act, 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, the person entitled to compensation may, without prejudice to the provisions of Chapter X, claim such compensation, under either of those Acts, but not under both. Section 140 finds place in Chapter X of the Motor Vehicles Act.

6. Section 3(1) of the Workmen's Compensation Act, reads as under:-

"(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter."

7. A look at the above provision shows, that thereunder the liability of the employer arises in the event of personal injury being caused to a workman "by accident arising out of and in the course of his employment". Thus, a combined reading of Section 165, 167 of the Motor Vehicles Act, and Section 3 of the Workmen's Compensation Act, shows that, the field of operation of the two Acts is entirely different, inasmuch as, for entitlement to lay a claim under the Motor Vehicles Act, apart from other things the requirement is of existence of a causal connection between the accident and use of motor vehicle. As against this entitlement to lay a claim under Workmen's Compensation Act the requirement is the existence of causal connection between the accident and the course of employment i.e. it should arise out of and during the course of employment.

8. It is in this background that the legislature comprehended situations, where the requirements of provisions of both the Act may co-exist, viz. that the death or personal injury may have a causal connection, with the use of Motor Vehicle, and at the same time, it might arise out of, and during the course of employment. In that event obviously the victim had a right to claim compensation in both the forums, but then by virtue of provisions of Section 167, the right of claimant has been restricted, to laying a claim in either of the forums, as he may choose, but not both.

9. A further comprehension of the scheme of things, in this regard, under the Motor Vehicles Act, vis-a-vis Workmen's Compensation Act, shows that, there is a vast field for the claimant to exercise option, for various considerations, to choose the forum, i.e. the Tribunal established u/s 165 of the Motor Vehicles Act, or the Workmen Compensation Commissioner. Inasmuch as, may be that under the Motor Vehicles Act, the claimants may have to prove few more things, which probably they may not be required to be proved under Workmen's Compensation Act. Likewise the amount awardable in a claim u/s 166, or 163A under the Motor Vehicles Act may materially differ as against the amount awardable in a claim under the Workmen's Compensation Act, and therefore, the workman may exercise his wise discretion, to approach either of the forums.

10. Thus, it is only in cases, where the claim of the claimants is entertainable by both the forums, and the choice is exercised by the claimants, to opt the forum of Workmen's Compensation Commissioner, then alone the provisions of Section 3(1) of the Motor Vehicles Act, may be invoked. In other words, it is only, in cases where the claimants contends a casual connection, between the accident, and the use of the motor vehicle, then only the provisions of Section 3(1) of the Motor Vehicles Act, may be invoked, before the Workmen's Compensation Commissioner, obviously not otherwise.

11. In the present case, since even according to the averments of the claim petition, there is no causal connection, of any accident, with the use of the Motor Vehicle, but the claim is laid, for an accident i.e. death, arising out of, and during the course of employment, in my view, the learned Commissioner has rightly declined, the application of the claimants, u/s 3(1) of the Motor Vehicles Act.

12. The appeal thus has no force, and is hereby dismissed.