
(1995) 08 RAJ CK 0013
In the Rajasthan High Court
Case No : C.R.P. No. 913 of 1993

Gopali (Smt.)

APPELLANT

Vs

Bhagchand and Another

RESPONDENT

Date of Decision : 25-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Motor Vehicles Act, 1988 — Section 140, 143

Citation : (1997) ACJ 682 : (1998) 3 LLJ 507 : (1996) 2 RLW 288 : (1996) 2 WLC 451

Hon'ble Judges : Mohini Kapur, J

Bench : Single Bench

Advocate : Satyavant Sharma, for the Appellant; R.K. Sharma, for Respondnet No. 1 and N.S. Rajawat, for the Respondent

Final Decision : Allowed

Judgement

Mohini Kapur, J.—The petitioner claimant filed a claim petition before the Workmens" Compensation Commissioner, Tonk in respect of death of her daughter Hukma who died in an accident on January 28, 1991 by truck No. R.J.E. 8221. The petitioner"s contention was that her daughter Hukma was working on the said truck for loading and unloading and was in employment of the truck owner, who is non-petitioner No-1. The accident occurred during the course of her employment, as such the claim was filed before the Workmen"s Compensation Commissioner (hereinafter referred to as "the Commissioner"). The petitioner applied for grant of interim compensation and this has been disallowed by the Commissioner by order dated December 18, 1992. It has been observed that prima facie it has not been satisfied that the deceased was an employee of the non-petitioner hence, no order can be passed u/s 140 of the Motor Vehicles Act, 1988 (for short M.V.Act).

2. A preliminary objection has been raised on behalf of the non-petitioners about the maintainability of the revision petition. According to him the Commissioner is

not any Court subordinate to the High Court as Section 115 C.P.C. only covers the civil Courts in normal hierarchy of Courts. This matter was decided by a Full Bench of this Court in Bashir Khan Vs. Ranger, Social Vaniki and Others, a question was framed by a Single Judge which was referred to a Larger Bench and while answering the question whether the Commissioner under the Workmen's Compensation is a Court subordinate to the High Court and as such revision lies against the order passed by the Commissioner, it was held that revision petition u/s 115 C.P.C. was not maintainable against the order passed by the Commissioner under the Workmen's Compensation as the Commissioner was not Court subordinate to the High Court for purposes of Section 115 C.P.C. However in the alternative it was prayed that the revision petition may be treated as a writ petition under Articles 226/227 of the Constitution of India and this prayer was allowed and the petition was decided on merits. In view of this Full Bench decision, the present revision petition is not maintainable. Hence, the learned counsel for the petitioner has prayed that this may be treated as a writ petition and for this the learned counsel for the respondents have no objection. Accordingly I proceed with this petition as it was a writ petition.

3. The relevant provisions in regard to award interim compensation are contained in Sections 140 and 143 of the M.V. Act. These provisions read as under :

"140 ; Liability to pay compensation in certain cases on the principle of no fault :

(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.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of twenty-five thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twelve thousand rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person,

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

"143 : Applicability of Chapter to certain claims under Act 8 of 1923 : The provisions of this Chapter shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Workmen's Compensation Act, 1923 resulting from an accident of the nature referred to in Sub-section (1) of Section 140 and for this purpose, the said provisions shall, with necessary modifications, be deemed to form part of that Act".

This provision has been introduced in the M. V. Act for award of interim compensation without fault in certain cases. It is in the nature of beneficial provision which allows a fixed amount as interim compensation even before liability of the respondent is proved by showing that the accident in which the injured claimant or the deceased was injured, was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles or any other person and it is in order to give some relief to the injured or the dependents of the deceased that this provision has been introduced. The only conditions necessary for the award of the interim compensation are that: (i) the accident has arisen out of use of motor vehicle; (ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose heirs have preferred the claim; (iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident. Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More,

4. It has been argued by the learned counsel for the petitioner that u/s 143 of the M.V. Act, the provisions of Chapter X which includes Section 140 have been made applicable to claims under the Workmen's Compensation Act. Whether the claim for compensation is in respect of death or permanent disablement resulting from an accident of the nature referred to in Sub-section (1) of Section 140, the provisions of Section 140 of the M.V. Act with necessary modifications shall be deemed to form part of the Workmen's Compensation Act. According to the learned counsel for the petitioner the only matter to be considered by the Commissioner for purposes of grant of interim compensation is that the accident has arisen out of the use of a motor vehicle, death or permanent disablement is the result of the accident and the claim is against the owner and insurer of the vehicle and further matters are not to be inquired into at this stage. It is also contended that u/s 167 of the M.V. Act the claimant has the option to choose the forum where he would like to make claim where the death or bodily injury to any person gives rise to claim compensation under the M.V. Act as well as under the Workmen's Compensation Act but cannot proceed under both Acts. When the petitioner has chosen to file a claim before the Commissioner and the provisions of Chapter X of the M.V. Act are applicable then interim compensation should be awarded without entering into the question of liability of the non-petitioners at this stage as at the time of final decision, necessary orders for the adjustment of the amount can be passed.

5. Learned counsel for the respondent has submitted that the deceased was not

an employee of non-petitioner No. 1 and was not working on the truck and unless the petitioner is able to satisfy on this point of eligibility for making a claim which is lacking and unless something is shown in this respect the Commissioner cannot award interim compensation. According to him the interim award is an award on basis of no fault liability but here in this case, it is to be first established that a claim under the Workmen's Compensation Act is maintainable and when this is satisfied in a prim a facie manner then only the Commissioner can proceed to award interim compensation.

6. I have considered the contentions raised on behalf of both the sides.

7. In *United India Insurance Co. Ltd. v. Smt. Ghisi Devi and Ors.* 1989 (1) RLR 107 it has been held that at the stage of award of compensation on basis of no fault liability, the Tribunal cannot enquire into the merits of the defence available to the Insurance Company such as that the driver of the vehicle was not having a licence. Again in *National Insurance Co. Ltd. v. Savitri Bai and Ors.* 1991 ACJ 540 it was held that the defence of the Insurance Company that the vehicle was being used in direct breach of conditions contained in the policy cannot be considered at the stage of grant of interim award and the trial of such defence has to be postponed as the same is bound to be time consuming and is likely to defeat the very purpose for which the Section for award of interim compensation has been enacted.

8. The Workmen's Compensation Act, 1923 has been enacted to provide for the payment by certain classes of employers to their workers of compensation for injury by accident. Schedule II gives the particulars of the workmen who shall be covered by the Act. The general principle of the Act is that compensation should ordinarily be given to workmen who sustain personal injuries by accidents arising out of and in the course of their employment. The liability to pay the compensation for the personal injuries is on the employer. The claimant can either institute a suit for recovery of damages or make a claim before the Commissioner but both the remedies are not open for him as provided in Sub-section (5) of Section 3 of the Act. Similarly, if the claimant is entitled for the claim under the M.V. Act as well as under the Workmen's Compensation Act then too he has to exercise his option and can proceed only before one forum.

9. The question whether the relationship of employee and employer existed between the parties will always depend upon the facts and circumstances of each case. In, the present case also the question whether the deceased Hukma was an employee of the owner of the vehicle and could be included in the definition of "workman" under the Act would be a question to be decided on basis of the evidence which the parties will produce in the case. Whether this question has to be first decided prior to dealing with the application for grant of interim compensation u/s 140 of the M.V. Act is to be decided in this case.

10. The very purpose of awarding an interim compensation is to provide some assistance to the injured or the family of the deceased without entering into the

question of wrongful act, neglect or default of the owner of the vehicle. If a claimant is required first to prove that the injured or the deceased was a workman then the provisions of speedy remedy which is by way of interim measure would be defeated. Just as the Insurance Company cannot be allowed to raise its defence against the claimant at the stage of awarding interim compensation so also the defence is also of the owner and insurer have to wait for some time and they cannot be decided at the stage of grant of interim compensation. Section 143 of the M.V. Act provides for the applicability Chapter X of the M.V. Act to claims for compensation under the Workmen's Compensation Act and it further provides that the said provisions "shall with necessary modifications form part of that Act". What is the necessary modification which has been contemplated by this provision". When the legislation is of a beneficent nature, then the interpretation of the provisions of law is to be made in such manner that it advances the beneficent purpose underlying in it in preference to the construction which tends to defeat that purpose. This proposition has been accepted in a number of cases. Referring the case of Shivaji Dayanu Patil (supra) wherein it has been held that the no fault liability confers a benefit of a limited amount by way of compensation and while interpreting such beneficent legislation the Court should adopt a construction which advances the beneficent purpose underlying in it and not such construction which tends to defeat that purpose. In this case, there was a collision between a truck and a petrol tanker and the tanker turned turtle, and after four hours of the accident the tanker exploded and caught fire resulting in injuries to and death of several persons assembled near it. The plea of the truck owner was that the accident was not on account of collision and as such they were not liable for the accident. It was held that when the accident had arisen out of the use of a motor vehicle then interim compensation could be awarded and the defence could not be entered into at the stage and the Court may pass order u/s 140 of the M.V. Act.

11. The provisions of Section 143 of the M.V. Act may be again looked into. It simply says that where there is claim for compensation in respect of death or permanent disablement of any person under the Workmen's Compensation Act resulting from an accident of the nature referred to in Sub-section (1) of Section 140 of the said provisions shall, with necessary modifications, be deemed to form part of that Act. This Section would become applicable as soon as the claim for compensation in respect of death or permanent disablement has been presented. The death or permanent disablement should be the result of an accident and the nature of the accident is that it was out of the use of a motor vehicle or motor vehicles. There is nothing in this Section to suggest that before making Section 140 of the M.V. Act applicable to claims under the Workmen's Compensation Act, the claimant has to satisfy that the deceased or the person who has been permanently disabled was a workman as the details are to be enquired into later and if they are allowed to be enquired into at the stage of grant of interim compensation then the very purpose of this beneficent legislation shall be

defeated. There is no provision in any law that interim compensation should be ordered in a claim only when the claimant has satisfied that he is a workman or that the deceased was a workman. There has to be a claim and the claim should be arising out of an accident of use of a motor vehicle and the result of the accident should be death or permanent disablement of any person. If this material is placed before the Commissioner then the interim compensation in accordance with Section 140 of the M.V. Act has to be awarded without asking the claimant to satisfy that the deceased was a workman.

12. The F.I.R. about the accident and the post mortem report of the deceased have already been filed by the claimant petitioner before the Commissioner and the necessary ingredients of Section 140 of the M.V. Act are basis of the claim hence, the Commissioner ought to have awarded interim compensation u/s 140 of the M.V. Act.

13. In the result this revision petition, treated as writ petition is allowed. The non-petitioners are directed to pay a sum of Rs. 25,000 (Rupees Twenty Five Thousand only) to the petitioner by way of interim compensation as provided by Section 140 of the M.V. Act.