

(1988) 02 AP CK 0013
In the Andhra Pradesh High Court

Imam Bi and Another

APPELLANT

Vs

Oriental Fire and General Insurance Company and Another

RESPONDENT

Date of Decision : 13-02-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110A(1), 110AA

Citation : (1989) ACJ 291

Hon'ble Judges : Venkataramana Rao, J

Bench : Single Bench

Advocate : Mirza Munawar Ali Baig, for the Appellant; S. Hanumaiah, for the Respondent

Judgement

1. In an accident, lorry AAT 4446 which was proceeding on September 23, 1981, from Vijaywada to Madras on the Grand Trunk Road hit a stationary lorry AAG 9998. In that accident, the clear of lorry AAT 4446 received grievous injuries and died in the hospital on the next day. Alleging that the accident was due to rash and negligent driving of the driver, the wife and minor daughter of the deceased filed O.P. No. 77 of 1983 against the insurance company, the first respondent in the original petition and against the owner of the vehicle, the second respondent in the original petition. In all, the claimants preferred a claim for Rs. 50,000, i.e., consisting of Rs. 45,000 for the loss of earnings, pain and suffering and association and Rs. 5,000 for loss of consortium.

2. The first respondent, i.e., the insurance company, filed a written statement denying the allegations in respect of rash and negligent driving and contended that the compensation claimed is very high. It was also stated in the written statement that the mother of the deceased, Shaik Kaleelam, filed a petition in W.C. No. 14 of 1982 in the court of the Commissioner for Workmen's Compensation, Guntur, under the Workmen's Compensation Act and the Workmen's Tribunal, after contest, passed an award for Rs. 18,000 against the second respondent herein and the claimants in this original petition were aware of those proceedings and that the compensation awarded by the Commissioner

under the Workmen's Compensation Act will accrue to the benefit of the legal representatives. It is further contended that the proviso to section 95(1)(b) of the Motor Vehicles Act expressly excludes the liability of the insurer in respect of death of, or bodily injury to, the employee-insured except the liability, if any, arising out of the Workmen's Compensation Act. Since the legal representatives have been awarded compensation of Rs. 18,000 in W.C. 14 of 1982, it is not open to them to claim compensation once again u/s 1110A of the Motor Vehicles Act.

3. The second respondent filed a counter adopting the counter of the first respondent.

4. The Tribunal framed appropriate issues Nos. 1 and 2 regarding the question whether the accident occurred on account of the rash and negligent driving of AAT 4446 and also regarding the amount to be awarded as compensation. It also framed an additional issue "whether the petition as filed is not maintainable in this Tribunal".

5. On the basis of the aforesaid pleadings and after considering the evidence of PW 1, exhibits A-1 to A-3 and B-1, the Tribunal held, on the additional issue, that as Award No. W.C. 14 of 1982 must be deemed to have been passed for and on behalf of the legal representatives of the deceased, Shaik Fareed, the claimants cannot maintain the original petition before the Motor Accidents Claims Tribunal, having regard to the provisions of section 110AA read with the proviso to section 110A(1) of the Motor Vehicles Act and on issue No. 1 that the accident occurred on account of the rash and negligent driving of the vehicle AAT 4446 by its driver. On issue No.2, the Tribunal held that no reliable evidence was placed regarding the income of the deceased and taking into consideration the age of the deceased, the number of legal representative left by the deceased, the Tribunal awarded a sum of Rs.18,000 by way of compensation to all the representatives of the deceased. Having regard to its finding on the additional issue, the claim was dismissed.

6. Aggrieved by the said order, the claimants, i.e., wife and minor daughter of the deceased, preferred the above appeal.

7. It is contended in this appeal that the finding of the Tribunal on the additional issue that the claim petition is not maintainable is not correct. Elaborating the contention, it was submitted that the mother of the deceased, no doubt, preferred W.C.C. No.14 of 1982 before the Commissioner for Workmen's Compensation without the knowledge of the appellants herein. In that case, exhibit B-1 award was passed. It does not preclude the appellants herein who were not parties to the Workmen Compensation Case No.14 of 1982 from preferring the claim before the Motor Accidents Claims Tribunal. In order to appreciate the contention, it is necessary to refer to section 110AA of the Motor Vehicles Act which was inserted by Act 56 of 1969 and came into force from March 2, 1970. Section 110AA of the Motor Vehicles Act reads as follows:

"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."

8. Chapter VII-A has no application to the instant case. It is clear from the aforesaid provision that it is open to the claimant to choose either the forum created under the Workmen's Compensation Act or under the Motor Vehicles Act. If once that option was exercised and an award was passed under the Workmen's Compensation Act, it is not open to the claimant avail of the remedy under the Motor Vehicles Act. In the instant case, the mother of the deceased availed of the remedy under the Workmen's Compensation Act and an award was passed.

9. But it is contended by the claimants that since the claimants were not parties to the proceedings under Workmen's Compensation Act, it cannot be said that they have chosen the remedy under the Workmen's Compensation Act. Hence, they are not prevented from preferring the present claim under the Motor Vehicles Act. This contention is based on the premise that each legal representative of the deceased can prefer a separate claim in respect of an accident. Such a contention cannot be accepted. Firstly, the cause of action for claiming compensation arises only out of a single accident and all the legal representatives together are entitled for payment of compensation arising out of the said accident. The compensation awarded either under the Motor Vehicles Act or under the Workmen's Compensation Act represents the compensation payable to all the legal representatives. The proviso to section 110A(1) of the Motor Vehicles Act lays down that where death has resulted from the accident, an application for compensation may be made by all or any of the legal representatives of the deceased. The proviso to sub-section (1) of section 110A of the Motor Vehicles Act makes it clear that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. Thus, it is clear that any application made claiming compensation where death has resulted from the accident, even if preferred by one of the legal representatives, is on behalf of all the legal representatives of the deceased. Hence, the compensation awarded is for the benefit of all the legal representatives of the deceased. Admittedly, in this case, the mother of the deceased, who is one of the legal representatives, claimed compensation under the Workmen's Compensation Act as could be seen from the award, exhibit B-1 and a sum of Rs. 18,000 was awarded as compensation. Hence the wife and the minor daughter of the deceased, who are

the other legal representatives of the deceased, are not entitled to maintain an application under the Motor Vehicles Act.

10. Learned Counsel for the appellant relied upon a Division Bench decision in *Smt. Gayatri Devi Vs. Tani Ram and Others*, , wherein it was held that proceedings under the Workmen's Compensation Act relate to the statutory liability created under the Act. The liability adjudicated upon by the Motor Accidents Claims Tribunal is a liability founded on tort and thus falls outside the scope of section 19 of the Workmen's Compensation Act. But that case arose out of an accident that occurred on February 18, 1968, and a claim was preferred on May 3, 1968, before the Motor Accidents Claims Tribunal prior to the addition of section 110AA of the Motor Vehicles Act which came into force from March 2, 1970. Since section 110AA was held to be prospective, it was held there is no bar for preferring a claim under the Motor Vehicles Act. But, in the instant case, the accident took place and claims were preferred after section 110AA of the Motor Vehicles Act came into force. Hence, the aforesaid decision has no application.

11. Learned Counsel for the appellants relied on *The Oriental Fire and General Insurance Company Ltd. and Another Vs. Union of India (UOI)*, a Division Bench decision of this court wherein it was held "The Tribunals under the Motor Vehicles Act and the Workmen's Compensation Act have concurrent jurisdiction. The option lies with the claimant to choose the one or other Tribunal. Of course, if the workmen chooses a particular Tribunal, it will not be open to him to choose the other one." Thus, it is clear that the above case does not support the contention of the appellants' counsel.

12. Learned counsel for the appellants also relied upon the decision in *Ogeti Pedda Ranganna Vs. Zaleka Bee and Another*, , in which the claimants allowed the application under the Workmen's Compensation Act to be dismissed for default as they wanted to prosecute the application filed under the Motor Vehicles Act. The Andhra Pradesh High Court held that since the application under the Workmen's Compensation Act has been dismissed for default as the claimants want to prosecute the claim under the Motor Vehicles Act, the dismissal for default of the application under the Workmen's Compensation Act does not bar the claimants from prosecuting the application under the Motor Vehicles Act. Thus, the aforesaid decision has no application to the facts of this case, since, in the instant case, the claim under the Workmen's Compensation Act was prosecuted and resulted in passing of the award, exhibit B-1.

13. It is submitted by counsel for the appellants that the amount of Rs. 18,000 awarded under exhibit B-1 award is not yet disbursed and the appellants herein being legal representatives of the deceased are entitled to a portion of the compensation awarded under exhibit B-1.

14. I agree with the aforesaid contention that the claimants being the legal representatives of the deceased, Shaik Farid, along with his mother, who was the claimant in W.C. Case No. 14 of 1982, are also entitled to payment of

compensation out of Rs. 18,000 awarded in W.C. Case No. 14 of 1982. Hence, it is open to the appellants herein to take appropriate steps or proceedings before the Commissioner for Workmen's Compensation, Guntur, for payment of their share of the compensation awarded in W.C. Case No. 14 of 1982.

15. In the result, the appeal is dismissed but, in the circumstances, without costs.