
(2002) 12 KAR CK 0028
In the Karnataka High Court
Case No : M.F.A. No. 3081 of 1996 (MVC)

Lalitha and Others

APPELLANT

Vs

Divisional Controller, Karnataka State Road Transport
Corporation and Others

RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 167

Citation : (2003) ACJ 1751 : (2003) 1 KCCR 306

Hon'ble Judges : M.F. Saldanha, J;K. Ramanna, J

Bench : Division Bench

Advocate : M.V. Poonacha, for the Appellant; K. Nagaraja, for the Respondent

Judgement

M.F. Saldanha, J.—We have heard the learned Counsel who represents appellants as also the learned Counsel who represents the respondent Nos. 1 and 2 on merits. At the outset we need to record that this appeal throws up for decision a very interesting position in law and we shall illustrate precisely as to how the controversy has arisen. The appellants are the wife and two sons of one S. Sridhar who admittedly was a driver employed by the K.S.R.T.C. On 22.10.1990 he was on duty and driving a K.S.R.T.C. lorry bearing registration No. MEF 7782. An accident occurred due to the floods in which Sridhar was killed and his claimants filed M.V.C. No. 182 of 1991 before the M.A.C.T. at Mysore claiming compensation aggregating to Rs. 5,90,032 from the respondent Corporation. Admittedly, the deceased was drawing a salary of Rs. 3,467 per month as he was a senior driver aged 50. The Corporation, inter alia, took up the contention that since the deceased was an employee of the Corporation and the death had occurred in the course of his duties that he was required to prefer his claim under the Workmen's Compensation Act before the authority constituted under that Act and that the Tribunal had no jurisdiction to entertain the claim. The Tribunal through order dated 18.10.1994 upheld this objection and held that the petition will have to be filed before the Workmen's Compensation Commissioner and dismissed the application filed before the M.A.C.T. The claimants were left

with no option except to go in the direction in which the Tribunal had sent them and they accordingly filed the application before the Workmen's Compensation authority in which an amount of Rs. 61,540 was awarded. The Corporation has deposited the full amount awarded plus penalty and interest aggregating to Rs. 1,05,643 before the authority. It is not very clear as to whether the amount has been withdrawn or not but the Corporation's learned Counsel clarifies the position that from the documentary proof produced before us that the Corporation has discharged its full obligation to the extent indicated above by depositing the amount before the authority and that the claimants are entitled to withdraw the same whenever they desire even if they have not done so.

2. The peculiar complication comes up because the applicants at the same time filed the present appeal on 16.2.1995 and the same has come up for hearing only now. The Corporation's learned Counsel raised a preliminary objection with regard to the maintainability of this appeal but more importantly his contention was that even assuming the appeal was maintainable that it is now rendered in fruituous because the claim has been adjudicated by the Workmen's Compensation authority and the claim has also been satisfied and his submission is therefore that there is a total legal bar on the principles analogous to *resjudicata* to the reopening of that issue. Learned counsel has also submitted that if the appellants desired to persist with their application to the M.A.C.T. irrespective of whatever order the M.A.C.T. may have passed, that they were obliged to wait until this appeal was decided and that if they have exercised their option to abide by the order of the M.A.C.T. then the following two positions would arise in law:

(a) Firstly, that as soon as the option to approach the Workmen's Compensation authority had been exercised by filing the application, that this appeal would be rendered infructuous because otherwise it would result in an analogous and untenable legal position whereby the party is resorting to both the remedies which is clearly barred u/s 167 of the Motor Vehicles Act. Learned counsel submits that the Act prescribes that claimant has to exercise the option and that once the option is exercised the claimant is bound by that option and cannot then retract and resort to both the remedies.

(b) That the claimant having approached the authority constituted under the Workmen's Compensation Act would tantamount to claimant having accepted the decision of the Tribunal and the claimant would therefore be stopped in law from thereafter presenting a challenge to that decision and that on this ground alone the appeal should be dismissed. The extension to this argument is that having approached the other authority having got the claim adjudicated and not having challenged that order, that the appellants are bound by that order which preclude them from any further consideration or re-adjudication of the claim in this appeal.

3. The appellant's learned Counsel has submitted that the objections canvassed on points of law even with regard to the maintainability of this appeal are

untenable because the applicants had approached the M.A.C.T. in the first instance. His submission is that the applicants had no choice except to approach the Workmen's Compensation authority as otherwise limitation was running out as has been clarified in the Tribunal order and the applicants would have been left without any remedy. At the same time, the learned Counsel submits that he does not make any secret of the fact that having regard to the limitations under the other statute that the applicants would be entitled to a higher compensation in this proceeding and that consequently, the applicants were well within their rights to challenge the order passed by the Tribunal through the present appeal. His further submission is that he is conscious of the fact that his clients cannot get the benefit in both the proceedings and that consequently, the benefit of the other proceeding or the existence of that proceeding will have to be totally ignored.

4. Undoubtedly, the submissions canvassed by the two learned Counsel do throw up a slightly complicated legal tussle but we have no difficulty in resolving it having regard to the sequence of events. It is true that u/s 167 of Motor Vehicles Act that an appellant has to exercise an option and stick to that option. In the present instance the party exercised the option in favour of the Tribunal and, therefore, under normal circumstances the M.A.C.T. would have adjudicated the claim. It is not anybody other than the respondent Corporation who raised the issue regarding the jurisdiction and it was at the instance of the Corporation that this objection was canvassed before the Tribunal and upheld and in our considered view if this objection was unjustified the Corporation cannot plead that it provides a legal bar to the claimants pressing the original claim petition. Mr. Nagaraja learned Counsel who represents the respondent Corporation submitted that having regard to the legal position which held the field, particularly at that point of time that the objection was canvassed in good faith but more importantly that the objection regarding jurisdiction and forum were perfectly valid and his submission therefore is that the Corporation cannot be prejudiced because of what has happened subsequently. We have taken this argument into consideration but what we need to take note of is that the Corporation will not be prejudiced insofar as it will not be saddled with two claims but at the same time, having regard to the fact that the appellants had approached the Tribunal in the first instance and having regard to the fact that they had absolutely no choice except to go to the Workmen's Compensation authority since their claim had been dismissed by the M.A.C.T., we cannot uphold the submission that in these circumstances, the option exercised by the appellants will proceed against them. In clear perspective, the option exercised by appellants was in favour of the M.A.C.T. and in preferring the present appeal they have stuck to that option. The appellants were diverted to the Workmen's Compensation authority because of the objection raised by the Corporation and if they followed the direction which came from the court that it does not mean that they have changed their option. The bar prescribed u/s 167 would therefore not come in their way.

5. The real question is as to whether, after Workmen's Compensation authority has heard the parties and adjudicated the claim, it would be permissible for the claim to be re-agitated or re-determined in the appeal. At first blush Mr. Nagaraja's argument does appear to be perfectly valid insofar as if for whatever reason the adjudication has proceeded and reached the culmination that it would normally not be open to the parties to ask for a reopening. At the same time, we need to take cognizance of the fact that the appellants cannot be prejudiced because of a wrong order passed by the Tribunal and consequently, it would be necessary for the appeal court to adopt an innovative process in order to correct the record. Under the normal circumstances we would have computed the compensation claimed by the appellants and deducted the amount awarded by the Workmen's Compensation authority in order to be fair to the Corporation. In law, however, that would be wrong insofar as then the court would be according its approval to both the proceedings which the law prohibits. The only option therefore for us is to hold that since the order of the Tribunal itself was untenable and unjustified since the appellants did have the dual options and they could not be precluded from having approached the M.A.C.T. that this Court would have to direct that the proceedings instituted and culminated before the Workmen's Compensation authority will have to be ignored in view of the fact that they emanated out of an order of the Tribunal which was wrong and unjustified and which has been set aside by this Court. Once that order goes the same result would follow vis-a-vis that proceedings and consequently, we direct that the Workmen's Compensation authority shall refund the whole of the amount that has been deposited with it and if the amount has been invested by the authority that the interest accrued thereon shall also be refunded to the Corporation. Since it is not very clear as to whether that amount has been paid over to the appellants and since we cannot rule out that possibility, we propose to clarify the position while passing final orders in this appeal that if at all that amount has reached the appellants that then the full credit for the same would have to be given to the Corporation. This is the only corrective action that would be permissible on the facts of the present case.

6. As far as the compensation amount is concerned, the position is very clear insofar as we have taken into account the salary, the 1/3rd deduction, we have applied the multiplier of 12 and we have arrived at a figure of Rs. 3,32,784 and adding on the statutory additions we arrive at a figure of Rs. 3,50,784 which is rounded off to Rs. 3,51,000 with interest at the rate of 6 per cent per annum. We direct the respondents to deposit the whole of the amount or balance of the amount minus what was deposited by them before the Workmen's Compensation authority if that amount has been released to the appellant, with the Tribunal within an outer limit of 12 weeks from today. Out of the amount that is deposited we apportion the compensation in the proportion of Rs. 50,000 to the appellant Nos. 2 and 3 who are the sons and Rs. 50,000 to respondent No. 3 who is the daughter because strictly speaking, she would also be entitled to a share in the estate of her father. The whole of the balance amount shall go to the

appellant No. 1 who is the wife. We direct, however, that since we desire that these amounts should accrue to the benefit of the persons concerned that the Tribunal shall ensure that the 3 amounts left to the 3 children as also an amount of Rs. 2,00,000 out of the amount payable to the wife shall be invested in separate accounts in the names of each of these persons with a nominee of their choice at a Post Office closest to the place where they are residing. The amount shall be invested in the Post Office savings bank account and the corpus shall be placed in the Post Office monthly income scheme which shall yield a tax free return to the beneficiaries on a monthly basis. That interest which shall be credited to the SB A/c shall be released to the beneficiaries. Also, the whole of the interest amount on the aggregate compensation which is payable to the appellant No. 1 wife shall be released to her along with the balance of Rs. 1,000 out of the compensation amount. With these directions, the appeal which succeeds to stand disposed of. No order as to costs.