
(2016) 02 KAR CK 0311
In the Karnataka High Court
Case No : M.F.A. No. 30950 of 2009

National Insurance Company Ltd.

APPELLANT

Vs

Vijayalaxmi

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Citation : (2016) AAC 1541 : (2016) 5 ALLMR 17

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Sri Preeti Patil Melkundi, Advocate, for the Appellant; Sri Prashant Kumar S. Gotur, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—These two appeals are filed by the National Insurance Company Limited as well as the claimants, being aggrieved by the judgment and award dated 26th August, 2008 made in MVC No. 1093/1996 passed by the Motor Accident Claims Tribunal-VII, Bijapur (hereinafter referred to as "the Tribunal" for short).

2. Since the judgment and award passed by the Tribunal has been challenged in these two appeals, both the appeals are clubbed together and disposed of by this common judgment.

3. MFA No. 30950/2009 is filed by the National Insurance Company, challenging the judgment and award fastening the liability on them to compensate the claimants whereas the claimants being not satisfied with the quantum of compensation filed MFA No. 30544/2008 seeking for enhancement of compensation.

4. The respondents 1 to 6 in MFA No. 30950/2009 and appellants in MFA No.30544/2008 filed the claim petition contending that husband of first claimant, father of claimants 2 to 4 and son of claimants 5 and 6 one V. Nagabushan working on the site of UKP/IBC for construction of the canal work near Sungthan

village of Sindagi Taluk. Respondent No. 2 was a contractor of the said Canal work. Vehicles are being used for transportation of raw materials. On 6-10-1996 at about 11.00 p.m., due to the rash and negligent driving of the Ashok Leyland Dumper bearing registration No. AP-9/T-6591 driven in a rash and negligent manner dashed against Nagabushan. Due to which, Nagabushan fell down and sustained grievous injuries and succumbed to injuries on the spot. The claimants claim that the accident occurred due to the rash and negligent driving of Ashok Leyland Dumper. They further claim that at the time of death, the deceased was working as a Supervisor in the second respondent-company and earning salary of Rs. 4,500/- p.m. The claimants are dependants of the deceased and hence sought for compensation.

5. In pursuance of the notice issued by the Tribunal, the driver of the Dumper remained ex parte. Though the second respondent appeared through counsel, he has not filed any written statement. The third respondent appeared through their counsel and filed detailed written statement contending that the claim petition itself is not maintainable. Due to negligence on the part of the deceased himself, the accident had occurred. The deceased was an employee of the second respondent-company and he died during the course and out of employment. Hence, they filed a claim petition before the Commissioner for Workmen's Compensation under the Workmen's Compensation Act, 1923. The Tribunal has no jurisdiction to entertain and decide the claim petition. They have also disputed the insurance policy of the Ashok Leyland Dumper and sought for dismissal of the claim petition.

6. On the basis of pleadings of the parties, the Tribunal framed necessary issues. In order to prove the case of claimants, the first claimant was examined as P.W.1 and also examined other two witnesses as P.W.2 and P.W.3 and got marked the documents as Ex.P.1 to Ex.P.4. On behalf of the 3rd respondent/insurance Company, an Administrative Officer of the company was examined as R.W.1 and got marked the insurance policy of the offending vehicle as Ex.R.1.

7. It is relevant to mention here that when the claim petition of the claimants was pending before the Tribunal, the respondent/insurance Company had filed I.A. No. 4 before the Tribunal contending that the claim petition filed by the claimants under Section 166 of the Motor Vehicles Act is not maintainable since the claimants have already approached the Commissioner for Workmen's Compensation in WCA/SR-16/1997 under the provisions of Workmen's Compensation Act, 1923 claiming compensation on account of death of Nagabushan against the second respondent and the Insurance Company. The Commissioner for Workmen's Compensation passed the judgment and order on 26-5-1997 awarding compensation of Rs. 1,85,355/- to the claimants. Hence, the claimants cannot maintain one more claim petition for the same accident occurred on 6-10-1996. Under Section 167 of the Motor Vehicles Act, the claimants had to approach either the Commissioner for Workmen's Compensation or the Motor Accident Claims Tribunal and they cannot maintain

claim petitions both under Workmen's Compensation Act or Motor Vehicles Act. Hence sought for dismissal of the claim petition on this ground also.

8. The claims filed objections to the said application.

9. The Tribunal after considering the matter in detail, by its judgment and award dated 18-12-2001 dismissed the claim petition by allowing I.A. No. IV filed by the Insurance Company. Being aggrieved by the said judgment and award passed by the Tribunal, the claimants preferred MFA No. 2151/2002 before this Court challenging the dismissal of their claim petition. This Court, allowed the appeal on 3-12-2007 and set aside the order dated 18-12-2001 passed by the Tribunal and restored MVC No. 1093/1996 on the file with a direction to the Tribunal to dispose of the claim petition on merits along with application I.A. No. IV filed by the Insurance Company by framing an additional issue (as to "whether the claim petition is maintainable before it"). In pursuance of the direction issued by this Court, the Tribunal restored MVC No. 1093/1996 on the file, framed additional issue and called upon the parties to lead evidence on the additional issue.

10. The first claimant got examined herself as RW.1. The brother of the first claimant examined himself as P.W.2 and also examined one more witness as P.W.3 and got marked the documents as Ex.PI to Ex.P4. An Administrative Officer of the Insurance Company was examined as R.W.1 and got marked the insurance policy as Ex.R1.

11. The Tribunal after considering the oral and documentary evidence let in by the parties and taking into consideration the order made in WCA.SR. 16/1997 held that the claim petition filed before the Commissioner for Workmen's Compensation is under Group Insurance Scheme which is recognised under the Workmen's Compensation Act. In accordance with the said scheme, the second respondent has entered into an agreement with the United India Insurance Company Limited, Hyderabad, agreeing to indemnify the risk of employees working under them and to pay compensation to the workmen who suffers bodily injuries or death during the course of employment. In view of the said scheme, the claimants claimed compensation under Workmen's Compensation Act. Whereas the claim petition was filed under Section 147 of the Motor Vehicles Act for death or bodily injuries sustained to the third party, the claim petition filed under the Workmen's Compensation Act as well as the Motor Vehicles Act are in different spheres and held that the claimants can maintain the said petition under the Motor Vehicles Act and the same is maintainable.

12. With regard to quantum of compensation is concerned, though claimants claim that deceased was working as a Supervisor, earning more than Rs. 4,500/- p.m., no document has been produced to substantiate the same. The second respondent also not supported the claim of the claimants. In view of that, the Tribunal taking into consideration notional income of Rs. 25,000/- p.a., as the accident was of the year 1996, deducting 3rd towards his personal expenditure,

taking the age of the deceased as 31 years as on the date of death, applying the multiplier 16, awarded a sum of Rs. 2,66,720/- towards loss of dependency, Rs. 15,000/- towards loss of estate, Rs. 15,000/- towards loss of consortium, Rs. 15,000/- towards loss of love and affection, Rs. 5,000/- towards medical and funeral expenditure. In all, the Tribunal has awarded a sum of Rs. 3,16,670/- with interest at the rate of 6% p.a. from the date of petition till realisation against respondent No. 3. The appellant-Insurance Company being aggrieved by the judgment and award passed by the Tribunal, filed MFA No. 30950/2009. The claimants being not satisfied with the quantum of compensation awarded by the Tribunal have filed MFA No. 30544/2008.

13. Smt. Preethi Patil, learned counsel appearing for the Insurance Company contended that the judgment and award passed by the Tribunal is contrary to law. Section 167 of the Motor Vehicles Act imposes a restriction in maintaining claim petitions both under the Motor Vehicles Act and Employees Compensation Act for the same cause of action. Immediately after the accident, the legal representatives of the deceased had filed a claim petition before the Commissioner for Workmen's Compensation contending that the deceased died during the course of employment and they are entitled for compensation. Accordingly, the Commissioner after examining the matter in detail, taking into consideration income of deceased as Rs. 1,800/- p.m. deducting 50% thereof, applying the relevant factor of 205.95 awarded a sum of Rs. 1,85,355/- with interest at 12% p.a. Hence, the claimants cannot maintain one more petition under the Motor Vehicles Act. Since the claimants have already selected the forum of Commissioner for Workmen's Compensation, they are barred from claiming compensation under the Motor Vehicles Act. The judgment and award passed by the Tribunal is contrary to law. In support of her contention, she relied upon the judgments reported in 2013 (2) TAC 1 (SC): AIR 2013 SC 1853 in the case of Oriental Insurance Company Limited v. Dyamavva and others (2006) 2 SCC 641 : AIR 2006 SC 577 in the case of National Insurance Company Limited v. Mastan and another, 2010 (2) TAC 266 : 2009 Lab IC 3948 (Raj) (Rajasthan) in the case of New India Assurance Company Limited v. Smt. Bidami and others, 2014 (1) LLJ 4 (Kant) in the case of Shanthamma and another v. Divisional Controller, K.S.R.T.C., Kolar Division, Kolar and an unreported judgment made in MFA No. 31234/2013 disposed of on 10th July, 2014.

14. On the other hand, learned counsel appearing for the respondents/claimants argued in support of the judgment and award passed by the Tribunal regarding maintainability of the claim petition before the Tribunal. However, contended that the compensation awarded by the Tribunal taking into consideration notional income of Rs. 25,000/- p.a. is on the lower side. Further the compensation awarded towards loss of estate; loss of consortium, loss of love and affection is also on the lower side and sought for enhancement of compensation.

15. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award and oral and documentary

evidence and also the judgments relied upon by the learned counsel for the parties.

16. The records clearly disclose that deceased V. Nagabushan was working on the site at UKP project for the construction of the Canal work near Sungthan village of Sindgi Taluk. He was the employee of second respondent-company. The employees working under the second respondent are covered by the Group insurance policy taken by the second respondent. On 6-10-1996 at about 11.00 p.m., a Ashok Leyland Dumper bearing registration No. AP-9/T-6591 dashed against the said V. Nagabushan, as a result of which, he sustained injuries to vital parts of the body, subsequently, he succumbed to the injuries. Accident occurred during the course and out of employment and the claimants are entitled for compensation before the Commissioner for Workmen's Compensation. Accordingly, the claimants filed claim petition in WCA-SR-16/1997. Simultaneous, they also filed a claim petition under Section 166 of the Motor Vehicles Act for the death of deceased - Nagabushan. The Commissioner for Workmen's Compensation after examining the matter in detail held that the deceased died during the course and out of employment. Hence, the claimants are entitled for compensation. Taking into consideration income of the deceased at Rs. 1,800/- p.m. and deducting 50% thereof, taking into consideration age of the deceased as 31 years, applying the relevant factor 205.95, the Commissioner has awarded compensation of Rs. 1,85,355/-. Even after receipt of the said compensation, the claim petition has been filed under the Motor Vehicles Act seeking compensation in MVC No. 1093/1996. In the said proceedings, the appellant-National Insurance Company filed I.A. No. 4 seeking for dismissal of the claim petition contending that the claimants cannot maintain claim petition both under the Workmen's Compensation Act as well as under the Motor Vehicles Act. The claimants filed objections to the said I.A. No. 4. The Tribunal after considering the matter in detail upheld I.A. No. 4 and dismissed the claim petition.

17. Being aggrieved by the said judgment, the claimants filed an appeal before this Court in MFA No. 2151/2002. This Court by an order dated 3-12-2007 allowed the appeal and quashed the order passed by the Tribunal and remanded the matter to the Tribunal for reconsideration of the same afresh after framing necessary issues. While remanding the matter, at paragraph 11 of the judgment, the Division Bench of this Court observed as under:

"It is true that in respect of the same cause of action i.e. death of Nagabhushan due to injuries sustained in the motor accident on ,6-10-1996, claimants as LR's cannot approach Workmen's Compensation Commissioner and MACT and they have to exercise option under Section 167 of Motor Vehicles Act. They have to either approach the Workmen's Compensation Commissioner and claim compensation or to approach Motor Accident Claims Tribunal and claim compensation after proving negligence and they cannot claim before the Workmen's Compensation Commissioner as well as before the Tribunal in respect of same cause of action....."

In paragraph 12 of the said judgment, the Division Bench of this Court observed as under :

"The Tribunal has not given a finding that the claim made before it under Section 166 of the Motor Vehicles Act and the claim made before the Commissioner was in respect of the same cause of action and the said fact could be ascertained only with reference to the evidence adduced before the Court and with reference to the claim petition filed before the Tribunal as also before the Commissioner and the award passed by the Commissioner, Bijapur, and the specific contention of the claimants that the claim before the Commissioner was regarding a claim in respect of a Group Insurance policy with United Insurance Company with which separate premium had been paid by the employer has been over looked by the Tribunal."

18. In view of the above finding, the claimants cannot file claim petition both under the Workmen's Compensation Act as well as Motor Vehicles Act. The Tribunal has to examine whether the claim made before the Commissioner for Workmen's Compensation and the claim made before it is in respect of same cause of action and to give a finding. On perusal of the claim petition filed before the Commissioner for Workmen's Compensation, it is clear that the claimants had claimed compensation due to the death of the deceased during the course and out of employment after proving the relationship of employer and employee. The Commissioner taking into consideration income of the deceased as Rs. 1,800/- p.m. deducting 50% thereof, applying the relevant factor awarded the compensation of Rs. 1,85,355/- with interest at 12% p.a. due to the death of the deceased.

19. As per Section 167 of the Motor Vehicles Act, the claimants cannot claim compensation both under the Workmen's Compensation Act as well as Motor Vehicles Act. Section 167 of the Act reads as under :

"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 X claim such compensation under either of those Acts but not under both."

20. Reading of the above provision makes it very clear that an option was given to the claimants to seek compensation either under the Workmen's Compensation Act, 1923 or under the Motor Vehicles Act, 1988. The claimants having opted to file a claim petition before the Commissioner for Workmen's Compensation and accepted the compensation awarded under the Workmen's Compensation Act, 1923, were precluded by Section 167 of the Motor Vehicles Act, 1988 to seek compensation under the Motor Vehicles Act. The Hon'ble Supreme Court in a judgment reported in the cases of National Insurance

Company Limited v. Mastan and another, 2009 Lab IC 3948 (Raj) has clearly held that Section 167 contains a non-obstante clause provision providing for such an option notwithstanding anything contained in the 1923 Act. Paragraph 33 of the said judgment reads as under :

"33.....Until the establishment of the Tribunal, the claim had to be enforced through the Civil Court as a claim in tort. The exclusiveness of the jurisdiction of the Motor Accident Claims Tribunal is taken away by Section 167 of the Motor Vehicles Act in one instance, when the claim could also fall under the Workmen's Compensation Act, 1923. That section provides that death or bodily injury arising out of a motor accident which may also give rise to a claim for compensation under the Workmen's Compensation Act, can be enforced through the authorities under that Act, the option in that behalf being with the victim or his representative. But Section 167 makes it clear that a claim could not be maintained under both the Acts. In other words, a claimant who becomes entitled to claim compensation both under the Motor Vehicles Act, 1988 and under the Workmen's Compensation Act because of a motor vehicle accident has the choice of proceeding under either of the Acts before the concerned forum. By confining the claim to the authority or Tribunal under either of the Act, the Legislature has incorporated the concept of election of remedies, insofar as the claimant is concerned. In other words, he has to elect whether to make his claim under the Motor Vehicles Act, 1988 or under the Workmen's Compensation Act, 1923. The emphasis in the section that a claim cannot be made under both the enactments, is a further reiteration of the doctrine of election incorporated in the scheme for claiming compensation....."

21. The main contention of the claimants is that immediately on the death of deceased, they filed a claim petition for claiming compensation with regard to group insurance made by the employer M/s. G. Srinivasalu Reddy and Company, Hyderabad and under that insurance policy a separate premium was paid for the employees working at work site at UKP Project for construction of canal under Workmen's Compensation Act, 1923. Hence, the claimants are entitled to claim both under the Group Insurance insured with the separate Insurance Company and also under the Motor Vehicles Act for the third party claim. On perusal of the claim petition filed before the Commissioner for Workmen's Compensation it is clear that compensation was sought for the death of deceased during the course and out of employment whereas under the Motor Vehicles Act, the claimants have sought for compensation for the death of the deceased. In view of the specific bar under Section 167 of the Motor Vehicles Act, two claim petitions cannot be filed before Commissioner for Workmen's Compensation as well as the Motor Vehicles Act for the death of the deceased. The Tribunal has not examined the matter in proper perspective. The Division Bench of this Court in a judgment reported 2014 (1) LLJ 4 (supra) held that "even though employer has deposited the compensation amount under the Workmen's Compensation Act, the claimants can maintain the claim petition under Section 166 of the Motor Vehicles Act. However, while awarding the compensation under the Motor

Vehicles Act, the compensation awarded under the Workmen's Compensation Act has to be deducted from the amount payable under the Motor Vehicles Act." The Hon'ble Supreme Court in a judgment reported in *Oriental Insurance Company Limited v. Dyamavva and others*, (AIR 2006 SC 577) (supra) held as under :

"Claim for compensation under Section 166 of the MV Act by the dependants of workman dying during the course of employment-employer of the deceased employee/workman "suo motu" deposited compensation with the Workmen's Compensation Commission in pursuance of sub-sections (1) to (3) of Section 8 of the Act of 1923 - Payment of the amount of compensation so deposited disbursed by the Workmen's Compensation Commission to the dependants of the deceased-workman for which such dependants did not lay any claim before him - Acceptance of the amount of compensation so deposited by the employer with the Workmen's Compensation Commission, by the deceased workman's dependants - Not amount to either exercise of option/choice to seek compensation under 1923 Act and as such would not preclude the claimants/dependants of the workman from making claim under the provisions of Motor Vehicles Act, in view of Section 167 thereof - Procedure under Section 8 of 1923 Act, having been initiated by the employer "suomotu" would not operate as a bar against the claimants/dependants of the deceased workman for making claim under Section 166 of the Motor Vehicles Act, 1988."

22. In view of the law declared by the Division Bench of this Court as well as the Apex Court, an option was available to the claimants to seek compensation either under the Workmen's Compensation Act, 1923 or under the Motor Vehicles Act, 1988. In the instant case, the Commissioner has already awarded compensation. While awarding the compensation amount under the Motor Vehicles Act, the amount awarded under the Workmen's Compensation Act has to be deducted.

23. With regard to quantum of compensation is concerned, though the claimants claimed that the deceased was getting a salary of Rs. 4,500/- p.m., no document has been produced to establish the same. While awarding compensation under the Workmen's Compensation Act, income was taken as Rs. 1,800/- p.m. and deducting 50% thereof, awarded compensation. While awarding compensation under the Motor Vehicles Act, in the absence of necessary document, the Tribunal had taken the notional income of Rs. 25,000/- p.a., deducting 3rd toward personal expenditure, the Tribunal has awarded a sum of Rs. 2,66,720/- towards loss of dependency and Rs. 50,000/- towards conventional heads. In all, a sum of Rs. 3,16,720/- with interest at 6% p.a. Admittedly the accident occurred during 1996. Taking the income at the relevant point of time, a sum of Rs. 3,16,720/- awarded by the Tribunal is in accordance with law. Since the claimants have already received the compensation under the Workmen's Compensation Act, while disbursing the compensation awarded under the Motor Vehicles Act, the said amount has to be deducted. Accordingly, I pass the following :

ORDER

1. MFA No. 30950/2009 filed by the Insurance Company is allowed in part. The judgment and award dated 26-8-2008 passed by the Motor Accident Claims Tribunal, Bijapur is modified to the extent that the claimants are entitled for compensation under the Motor Vehicles Act, deducting the compensation awarded under the Workmen's Compensation Act.
2. The claimants are entitled to interest at the rate of 6% p.a. from the date of petition till realization.
3. The claimants have not made out a case for enhancement of compensation. Hence, MFA No. 30544/2008 is dismissed.
4. The amount in deposit in MFA No. 30950/2009 is directed to be transmitted to the MACT, Bijapur.