
(1994) 12 KL CK 0020
In the High Court Of Kerala
Case No : M.F.A. No. 1309 of 1993-C

New India Assurance Co. Ltd.

APPELLANT

Vs

Pennamma Kurien and Others

RESPONDENT

Date of Decision : 19-12-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 110AA

Citation : (1995) 2 ACC 326 : (1995) ACJ 760 : (1995) 83 CompCas 251 :
(1995) 1 ILR (Ker) 737 : (1995) 2 LLJ 28

Hon'ble Judges : N. Dhinakar, J;K.T. Thomas, J

Bench : Division Bench

Advocate : Mathews Jacob, for the Appellant; Tony Sebastian and R. Ashok for respondents Nos. 1 to 4, for the Respondent

Judgement

K.T. Thomas, J.—The short question mooted in this appeal is this : Can a claim be made for compensation under the Workmen's Compensation Act, 1923 (for short "the Act") after dismissal of an application made before the Motor Accidents Claims Tribunal (for short "the Claims Tribunal"). The appellant (the New India Assurance Company Limited) contends that such a claim is not maintainable in law. The legality of the said contention requires consideration.

2. Facts : A claim was made by the legal heirs of one Kurien in respect of a motor (jeep) accident which happened on May 9, 1988, while the said Kurien was driving the, jeep (KLW 3057). As he died in the accident, the claim was preferred by, his legal heirs before the Claims Tribunal. But the claim was rapelled on the ground that the accident happened due to the negligence of the deceased, Kurien. However, the Claims Tribunal had ordered a sum of Rs. 15,000 to be paid to the claimants under "no-fault liability" as envisaged in Chapter VI1-A of the Motor Vehicles Act, 1939 (which corresponds to Chapter X of the Motor Vehicles Act, 1988) (for short the former will, hereinafter, be referred to as "the old M. V. Act" and the latter as the "present M. V. Act").

3. The legal heirs of the deceased, Kurien, then made a claim under the

provisions of the Workmen's Compensation Act. The Workmen's Compensation Commissioner ("the Commissioner" for short) fixed a sum of Rs. 77,856 as compensation payable by the employer of the deceased, Kurien, to his legal heirs. As the liability was covered by an insurance policy, the Commissioner has directed the insurer to pay the amount. The said award of the Commissioner is now being challenged by the insurer in this appeal filed u/s 50 of the Workmen's Compensation Act.

4. The facts, that there was an accident involving jeep KLV 3057 on May 9, 1988, and that it was driven by the deceased, Kurien, and that the accident was covered by the insurance policy for workmen's compensation claim, are not in dispute. The only point now raised, during arguments, is that the claimants are debarred from claiming compensation under the Workmen's Compensation Act in view of Section 110AA of the old Motor Vehicles Act since the same claimants have laid a claim earlier under the provisions of the Motor Vehicles Act, though the said claim was dismissed.

5. Section 110AA of the old Act is extracted below :

" Notwithstanding anything contained in the Workmen's Compensation Act, 1923, where the death 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 VIIA, claim such compensation under either of those Acts but not under both."

(It is the same as Section 167 of the new Motor Vehicles Act except that In the place of the words "without prejudice to the provisions of Chapter VII-A", the corresponding provision in the new Motor Vehicles Act contains the words "without prejudice to the provisions of Chapter X". This is because Chapter VII-A of the old Motor Vehicles Act corresponds to Chapter X of the new Motor Vehicles Act).

6. Section 110AA, even by a reading, conveys the message that one cannot have multiple or double advantage with the same cause of action. If a person has obtained a relief through the remedy provided in one of two statutes, he is debarred from availing of the remedy provided in the other statute. There can be no doubt about that proposition.

7. But if the person who filed the application under one Act is nonsuited on any ground, can it be held that he too would be debarred from filing the application under the other Act ? Dismissal of the application filed under one statute must be taken as the consequence of a finding that he has no valid claim to be made under that Act. If no valid claim can be made, its corollary is that it was not a claim recognisable under law. If so, there is no bar to making a claim under the other statute.

8. The said principle can be discerned from the words employed in Section 110AA

itself, "where death of or bodily injury of any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act," then only the claimant is debarred from making claims under both statutes as he is obliged to select only one of them. The bar would operate only if death or bodily injury to a person "gives rise to a claim" for compensation under both Acts. In other words, if death or bodily injury to a person does not give rise to a claim under any one of the Acts, there would be no bar to making a claim under the other Act even if he had made an unsuccessful move under the other Act earlier. Dismissal of an application under one of the Acts would tantamount to a finding that no legal claim arose under that Act.

9. A driver, who on account of his own negligence caused the accident, cannot get any valid claim for compensation under the Motor Vehicles Act (except under a claim of "no-fault liability"). If that driver had died in the accident his legal heirs would not get any better claim under the Motor Vehicles Act.

10. But the position would be different under the Workmen's Compensation Act in the case of death of the driver concerned. The employer is liable to pay compensation to his workman when he sustains personal injury by accident which arose out of and in the course of his employment. Section 3 of the Workmen's Compensation Act created the liability in that domain. Of course, the conduct of the workman in relation to that accident may affect his entitlement to compensation in certain contingencies mentioned in the proviso to Section 3. But the liability of the employer would remain unimpaired if the injured workman has succumbed to such personal injuries. Thus, under the Workmen's Compensation Act when death is caused to the workman in such contingencies his legal heirs would become entitled to compensation whether or not the accident is attributable to the negligence of the workman concerned.

11. A Division Bench of the Gujarat High Court in *Harivadan Maneklal Modi and Another Vs. Chandrasinh Chhatrasinh Parmar and Others*, , considered the scope of Section 110AA of the old Motor Vehicles Act. In that case, some amount was deposited by an employer as compensation under the Workmen's Compensation Act and the claimants later received the amount. Thereafter a claim was made under the Motor Vehicles Act for compensation in respect of the same accident. The Division Bench pointed out that if a claimant has exercised his option and has chosen one of the two remedies available to him, he will be entitled to compensation under the chosen remedy only and once he has exhausted his rights to seek compensation under either of the statutes, he cannot claim compensation under the other statute. The Division Bench gave accentuation to the words "may claim" in the said section and observed that these words clearly indicate that the person entitled to compensation must take a conscious decision and opt for compensation under one of the statutes. On the strength of the said interpretation, the Bench held that receipt of compensation money deposited by the employer in discharge of his obligation u/s 4 of the Workmen's Compensation Act, without the claimants making any claim for compensation,

cannot debar the claimants from claiming compensation under the Motor Vehicles Act. The said decision is not, in any manner, contrary to the legal position stated above.

12. Then the question is whether a claimant who got compensation under "no-fault liability" as envisaged in Chapter VIIA (corresponding to Chapter X of the new Motor Vehicles Act) would be visited with the consequence of forfeiture of the right to claim compensation under the Workmen's Compensation Act ?

13. Section 110AA of the old Motor Vehicles Act, after amendment through Act 47 of 1982, contained the words "without prejudice to the provisions of Chapter VIIA". Section 167 of the new Motor Vehicles Act is identical, to Section 110AA of the old Act as it stood after the amendment through Act 47, of 1982. It is, therefore, manifest that the interdict contained in the provision is without prejudice to any claim that may be made under "no-fault liability". The scheme of Chapter VIIA (and also that of its corresponding chapter in the new Motor Vehicles Act) would reveal that the doctrine of no-fault liability is a new statutory innovation made by Parliament as distinguished from the pristine tortious liability which was based on the theory of, fault (vide *United India Insurance Co. Ltd. v. Padmavathy* [1990] 1 KLT 750 , [1991] 70 Comp Cas 542 (Ker), So, Parliament while foreclosing a claimant from making double benefit under two different statutes, has taken care to segregate the compensation received on the basis of the principle of "no fault liability" That amount remains different from any other compensation So the claimants cannot be visited with any consequence for receiving any compensation amount towards "no-fault liability"

14. But it is only just and proper, that the amount received under "no fault liability" is given credit for while fixing the amount of compensation payable under the Workmen's Compensation Act since the compensation is in respect of the same accident and to the same person. It must be noted that such an adjustment is envisaged in Section 92B(3) of the old Motor Vehicles Act as well as in Section 141(3) of the new Motor Vehicles Act.

15. In the result, we confirm the order of the Workmen's Compensation Commissioner subject to a rider that the appellant insurance company can get credit for the amount paid to the claimants under "no-fault liability".