
(2010) 08 P&H CK 0513
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 539 of 1992

New India Assurance Co. Ltd.

APPELLANT

Vs

Shanti Devi and Others

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 165(1), 166, 167
Workmens Compensation Act, 1923 — Section 2(1)

Citation : (2012) ACJ 338 : (2012) 4 TAC 314

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—All the five cases arise out of a common award. F.A.O. Nos. 539, 540, 541 and 541-A of 1992 are at the instance of the insurance company and F.A.O. No. 448 of 1992 is at the instance of one Khando Devi whose case by the insurance company is covered in F.A.O. No. 541-A of 1992. The case of the claimants was that they had all been employed to pluck peas and they were all taken in the tractor-trailer and the accident took place when during their course of employment, the trailer turned turtle and the persons who were seated in the trailer were injured in the accident. The insurance company took a defence that they were all passengers in a goods carriage and, therefore, the policy of insurance would not cover the risk for the injuries suffered by them. The Tribunal, however, held that all these persons were workmen, who were engaged by the driver on that day for doing the work on behalf of the employer and they were, therefore, entitled to make a claim in such capacity as workmen against the employer, who was the insured for the vehicle. The Tribunal held that the risk was to be compulsorily covered by virtue of the provisions of section 147 and, therefore, proceeded to assess the compensation on the basis of evidence adduced by the respective claimants and supported by medical evidence through PW 15. Learned counsel appearing for the insurance company states that claimants had not given any specific details of the nature of employment and

who employed them. In the absence of a pleading relating to a contract of employment by the insured, the insurer could not be made liable. In the matter relating to contract of employment for plucking peas in a horticultural operation, the very nature of employment is informal and absence of written documents evidencing the contract, in my view, is not relevant. The Workmen's Compensation Act u/s 2 (1) (n) admits of a flexible definition to include any employment specified in Schedule II, whether the contract of employment was express or implied, oral or in writing. The class of employment in Schedule II would answer the description as specified under entry (xxix), which includes the persons in horticultural operations, forestry, bee-keeping or farming by tractors or other contrivances driven by steam or other mechanical power or by electricity. The further clauses (xli) and (xl) also refer to the employment in cultivation of land and clearing jungles. Therefore, I have no doubt in my mind that all the claimants were "workmen" under the Workmen's Compensation Act.

2. Although the accident arose out of the use of a motor vehicle, in order to make the insurer liable, it would require to be proved that the driver had been negligent in driving of the vehicle. In this case, the trailer seems to have turned turtle by the negligent driving of the driver and, therefore, by virtue of the provisions of section 167 of the Motor Vehicles Act, the claimants will have a right of option to proceed either under the Workmen's Compensation Act or under the provisions of the Motor Vehicles Act.

3. Learned senior counsel, Mr. Suri, argued that if they were all workmen, the claims could have been filed only under the Workmen's Compensation Act and not under the Motor Vehicles Act. This situation would arise in a case of claim by the representatives of the driver himself when it ensued death by the negligent driving of the workman himself. The principle is that a tortfeasor or his representative could have no rightful cause of action under Motor Vehicles Act. But if other workmen are injured by the negligent conduct of yet another workman, the jurisdiction of the Tribunal is attracted by the fact that the injuries have been caused by the use of a motor vehicle. Section 166 requires that the application for compensation should arise out of an accident in the nature specified u/s 165 (1) by a person who had sustained the injuries. Section 165 (1) of the Motor Vehicles Act states that an adjudication for compensation shall be made in respect of accident involving the death or bodily injury to persons arising out of the use of motor vehicles. The entitlement of a workman to proceed under the Motor Vehicles Act, therefore, is not excluded and the claim before the Tribunal, under the circumstances, is justified.

4. Learned senior counsel further argues that if the claim is made by the workmen against their employer, the scale of compensation shall be only in the manner provided under the Workmen's Compensation Act. If the compensation itself could be only under Workmen's Compensation Act then such a contention would be perfectly tenable but if there was a choice of forum which is available and the requirements of section 165 (1) and section 166 are satisfied, then, in

my view, there shall be no difficulty for the Tribunal to assess the compensation as just compensation in the manner set forth under the Motor Vehicles Act itself. There could be instances where a workman or representative may not be able to claim compensation under the Motor Vehicles Act such as when the driver who was a workman dies in an accident while driving in the course of employment by his own negligence. Since the provisions of the Motor Vehicles Act address a specie of the law of Tort, the proof of negligence is a sine qua non before a claim could be lawfully made before the Motor Vehicles Act. The Workmen's Compensation Act, however, sets out a different principle of making the employer liable for the injury or death arising out of and under the course of employment. Even negligent act of the workman himself may be irrelevant if it results in death. Therefore, if a claim were to be prosecuted by a workman, who had suffered injury by his negligence, an action under the Motor Vehicles Act shall be impermissible while his remedy would be only under the Workmen's Compensation Act. The other class of cases are cases where the workman will have a right of action against the employer both under the Workmen's Compensation Act as well as under the Motor Vehicles Act. The cases that we are dealing with fall in the second category of persons, who could lawfully address the claims either before the forum under the Workmen's Compensation Act or before the Motor Accidents Claims Tribunal. The scale of compensation shall then be the Act that the claimant invokes.

5. In this case, if all the claims are possible before the Motor Vehicles Act, then the scale of compensation shall also be in the manner prescribed under the Motor Vehicles Act. In this case, the Tribunal has referred to the fact that all the claimants were earning amounts in the range of Rs. 20 to Rs. 25 per day and the accident had resulted in fractures in the limbs for each one of the persons. The details of the fractures are set out in para 20 of the award as follows:

(1)

Daulti claimant suffered two fractures (right and left thigh)

Rs. 5,000

(2)

ShantiDevi (fracture right thigh)

Rs. 4,000

(3)

KhandoDevi (fracture right thigh)

Rs. 4,500 + 20 per cent permanent disability

(4)

Santosh (fracture left thigh)

Rs. 4,000

The doctor has given a certificate of permanent disability only to Khando Devi, who is the appellant in F.A.O. No. 448 of 1992, but in respect of others, there has been no evidence of permanent disability except that they had all suffered injuries resulting in fracture and suffered loss of income by their inability to work for a brief period. The Claims Tribunal has awarded compensation of Rs. 34,000 to the claimant in MACT No. 6 (Santosh), Rs. 35,000 to the claimant in MACT No. 7 (Daulti), Rs. 34,500 to the claimant in MACT No. 8 (Khando Devi), Rs. 34,000 to the claimant in MACT No. 9 (Shanti Devi). The Tribunal has assessed Rs. 20,000 for the mental agony, shock, pain and suffering and taken Rs. 10,000 as damage on account of loss of income. For the fractures, the Tribunal has determined the compensation in the range of Rs. 5,000, Rs. 4,000 and Rs. 4,500 in the case of Khando Devi. At the time when the appeals were admitted, it appears that this court had allowed the claimants to receive up to Rs. 25,000 and had stayed the balance amount. At this length of time, I do not seek to even make a reappraisal of the compensation, for that would mean denial of claim to the tune of few thousand of rupees. I maintain the awards granted to each one of the claimants and dismiss all the appeals including the appeal filed by Khando Devi for enhancement. It must be stated that Khando Devi has not placed any more record than what was brought before the Tribunal where the doctor had given the evidence to the effect that she has permanent disability. She had been awarded Rs. 34,500, which in my view is just compensation.

All the appeals are dismissed.