

(2002) 06 JH CK 0054
In the Jharkhand High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Geeta Sinha and Others

RESPONDENT

Date of Decision : 19-06-2002

Acts Referred:

Employees Compensation Act, 1923 — Section 20, 4, 4A, 8
Motor Vehicles Act, 1988 — Section 166, 167

Citation : (2002) 3 ACC 210

Hon'ble Judges : V.K. Gupta, C.J.; Tapen Sen, J

Bench : Division Bench

Judgement

V.K. Gupta, C.J.—The only point involved in this appeal is with respect to the entitlement of the claimant to maintain the claim petition u/s 166 of the Motor Vehicles Act in view of the bar created u/s 167 of the Act. Section 167 reads thus:

167. 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 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.

2. The contention of the appellant insurer before the Tribunal as also before us during the hearing of this appeal has been that because the claimant had exercised option of receiving compensation from the employee of the deceased under the Workmen's Compensation Act, 1923, their right to maintain a claim petition u/s 167 of the Motor Vehicles Act stood extinguished, and, therefore; the said claim petition should have been dismissed by the Tribunal. For the reasons that we state hereafter we do not find ourselves in agreement with the aforesaid contention of the appellant.

3. The expression used in Section 167 of the Act is that a person entitled to compensation both under the Motor Vehicles Act as well as under the Workmen's

Compensation Act, may claim compensation under either of these two Acts, but he or she cannot claim compensation under both the Acts. The expression used in Section 167, is, therefore, "claimant's such compensation". It is not the case of the appellant insurer before us that the claimant had filed any claim petition under the Workmen's Compensation Act, 1923 or had taken any steps in claiming any compensation under this Act before any authority. The admitted facts of the case are that the compensation amount under Workmen's Compensation Act, 1923 was paid by the employer of the claimant and this amount was received by the claimant, without the claimant having either claimed the amount or taking steps in claiming this amount by filing any claim application before the authority under the Workmen's Compensation Act. Filing of a claim application is different than receiving the claim. Not only that, the facts also indicate that whereas the claim application u/s 166 of the Motor Vehicles Act was filed by the claimants in the Tribunal on 28th February, 1996, the amount of compensation under the Workmen's Compensation Act, 1923 was paid to the claimants by the employer of the deceased on 27th January, 1998. Even if the doctrine of election is invoked and applied in this case, the claimant has elected to prefer the claim application u/s 166 of the Motor Vehicles Act much before they had received compensation under Workmen's Compensation Act and, therefore, applying the doctrine of election, it cannot be said that the claimants even elected to file any claim application under the Workmen's Compensation Act prior to the filing of the claim application under the Motor Vehicles Act.

4. A Division Bench of Karnataka High Court in the case of Managing Director, Karnataka Power Corporation Ltd. Vs. Geetha and Others, while dealing with the aforesaid questions, clearly held that since the claimants had not initiated and prosecuted any remedy under the Workmen's Compensation Act and merely because the compensation amount in Workmen's Compensation Act was deposited by the employer, claimants' right to claim compensation u/s 166 of the Motor Vehicles Act could not be defeated or extinguished. The following observations in the aforesaid judgment being apposite are reproduced hereinbelow:

In this case, claimants did not initiate and prosecute any remedy under the Workmen's Compensation Act, 1923. Wherever there was an employment injury or death, the employer is required by that law to deposit such amounts as are awardable under the Schedule to that "Act" with the Commissioner within the stipulated time. In depositing the amount the appellants purported to discharge their statutory obligation under that law. If that amount is paid over to the claimants, all that can be said is that such payment should be given deduction to in the compensation awardable in these proceedings. The bar contained in Section 110-AA of the Motor Vehicles Act is not attracted, because the claimants have not made any election u/s 110-AA. The provisions are a piece of social and welfare legislation. In the particular circumstances of this case and having regard to the fact that at the time of receiving this sum in response to the notice by the Commissioner, they had already initiated proceedings before the Tribunal u/s 110-

A, it is not possible to read into this conduct a conscious choice of a Forum which they could be said to have elected. If we accept the argument, the Forum would indeed be thrust on the hapless claimants, who never imagined that this will be the legal consequence of receiving the amount from the Commissioner.

5. On the similar question, a Division Bench of Gujarat High Court in the case of Harivadan Maneklal Modi and Another Vs. Chandrasinh Chhatrasinh Parmar and Others, , clearly held that the words "may claim" indicate that the option is with the person entitled to compensation and that option cannot be taken away by the acts of a third party discharging his obligation under Workmen's Compensation Act. Referring to Sections 4A and 8, read with Section 20 of the Workmen's Compensation Act, the Division Bench clearly observed and held that these provisions read together lay down that it is the obligation of the employer to pay compensation, if personal injury is caused to a workman by accident arising out of and in the course of his employment or the death occurs and that compensation at varying rates has to be calculated and paid by the employer. The obligation to pay compensation arises as soon as it falls due, failing which on the expiry of one month, the employer becomes liable to pay interest and penalty as provided under the Act.

6. Summing up the legal position, the Division Bench held as under:

After the amount is deposited the Commissioner has to apportion the amount payable to each dependant and disburse the same. The form for depositing the amount has been prescribed by the Rules framed under the Act. It is, therefore, obvious from the aforesaid provisions of the Act that the dependants of the deceased may receive compensation without any application made by them on the amount having been deposited by the employer as required by the statute. The employer would naturally be keen to deposit the amount which is due to the dependants of the deceased to avoid payment of interest and penalty.

7. At another place in the same judgment, Division Bench has held as under:

Merely because the appellants had received compensation deposited by the employer suo motu to discharge his obligation under the statute, it cannot be said that the appellants had exercised their option to claim compensation under the said statute and were, therefore, debarred from claiming compensation under the Motor Vehicles Act. We see considerable force in this submission. We have already pointed out earlier that u/s 110-AA of the Motor Vehicles Act the person entitled to compensation "may claim" such compensation under either the Workmen's Compensation Act or the Motor Vehicles Act but not both. The words "may claim" clearly indicate that the option is with the person entitled to compensation and that option cannot be taken away by the act of a third party discharging his obligation under the Workmen's Compensation Act. The appellants could not have prevented the employer from discharging his obligation under the said Statute by depositing the amount of Rs. 21,600/- to which the appellants were entitled under that Statute. Therefore, on the employer having

deposited the amount for the performance of the obligation cast on him by Section 4 of the Workmen's Compensation Act, it cannot be said that the appellants had made a claim under that Statute for compensation. In order to negative the claim made under the Motor Vehicles Act it must be shown that the person entitled to compensation had made a claim for compensation under the Workmen's Compensation Act. The key words are "may claim such compensation" under either of the Statutes.

8. Based on the aforesaid reasoning, therefore, the Division Bench of Gujarat High Court dealing with Section 110-AA of the Motor Vehicles Act, 1939, clearly found that the claimants would not be debarred from receiving compensation u/s 110-A of the Motor Vehicles Act, 1939 merely because they had received the compensation amount under the Workmen's Compensation Act. Undoubtedly, Section 167 of the Motor Vehicles Act, 1988 is in pari materia to Section 110-AA of the Motor Vehicles Act, 1939.

9. Being in respectful agreement with the views of the Gujarat High Court and the Karnataka High Court, we find and hold that in the present case, because the claimants had not made any claim, nor had they taken any steps for filing any application under Workmen's Compensation Act and merely because they had received the amount deposited by the employer in discharge of its statutory obligation, the application u/s 166 of the Motor Vehicles Act, 1988 could not be held to be not maintainable.

10. The Tribunal has awarded the amount with 9% interest from the date of the filing of claim application till the amount is paid. The Tribunal has also directed that in case this amount is not paid within three months from the date of the order, the appellant/insurer shall be liable to pay interest @ 15% per annum from the date of filing of the claim application. We modify the aforesaid direction of the Tribunal and direct that if the appellant insurer pays the entire claim amount with 9% interest as directed by the Tribunal within two weeks from today, the liability to pay penal interest @ 15% as ordered by the Tribunal shall stand waived and absolved. If, however, the amount is not paid within two weeks from today such, liability shall remain operative.