(1984) 10 SHI CK 0006

In the High Court Of Himachal Pradesh

Pushpa Devi and Others — APPELLANT

Vs

State of Himachal Pradesh — RESPONDENT

Date of Decision : 17-10-1984

Acts Referred:
Motor Vehicles Act, 1939 — Section 92A

Citation : (1986) 2 ACC 162 : (1985) 14 ILR HP 500

Hon'ble Judges : P.D. Desai, C.J

Bench : Single Bench

Judgement

P.D. Desai, J.—Although the Court does not wish to express its opinion on the subject finally, the proceedings under the provisions of the Motor Vehicles Act, 1939, (hereinafter referred to as "the Act"), based, on tortious liability of the respondents, appear, prima facie, to be ill-conceived, because there may be no scope for a claim for compensation on that basis. The appellants may, however, have a justifiable claim for compensation under the Workmen''s Compensation Act, 1923 (hereinafter referred to as "the Compensation Act"). The difficulty, however is that proceedings under the Compensation Act have not been initiated and they may be time barred now. To ask the appellants, who are the destitute widow and minor children of the deceased employee of the State, to institute proceedings under the Compensation Act now, and to seek condonation of delay, would result in protracted litigation and prolong their hardship and misery. Under the circumstances, it appears to be just and proper to direct the respondent-State, whose duty it is to ensure that the citizens have the right to an adequate means of livelihood (Article 39) and to secure that the operation of legal system promotes justice (Article 39-A) and to make effective provisions for securing the right to public assistance in cases of undeserved want (Article 41), to consider the voluntary implementation of the provisions of the Compensation Act at its own hand without driving the appellants to seek adjudication before the Competent Authority constituted under the said Act. For the said purpose, without prejudice to their rights and contentions, the appellants are directed to make a representation to the State Government (Secretary to the Government in the Animal Husbandry Department) within a period of IS days from today claiming compensation under the Compensation Act. The representation will be considered on merits and it will not be thrown out on the ground that the appellants have a remedy under the Compensation Act, that such remedy has not been invoked so far and that if it were to be invoked now, it would be time barred. The State Government, for the purposes ot the decision of the representation, take the relevant findings of fact recorded by the Motor Accident Claims Tribunal (I) Solan and Sirmur Districts at Nahan in MAC No. 10-N/2 of 1983, as binding on it. This direction has been given in view of the fact that no appeal has been preferred on behalf of the State Government against the said decision so far. If the appellants desire to be heard in parson such hearing shall be given to them by the Secretary to the Government in the Animal Husbandry Department. The State Government shall record a reasoned decision on the representation within a period of one month from the date of the receipt of the said representation. The orders passed on the representation shall be placed on the record of this appeal on May 4, 19S4. The case to be treated as part-heard.

17-5-1984

2. The learned Advocate General has produced an order dated April 14, 1984, passed by the Financial Commissioner (Development) to the Government of Himachal Pradesh which has been made pursuant to the order made by this Court on March 17, 1984. According to the order pas sed by the Financial Commissioner, the appellants wherein become entitled to the payment of a sum of Rs. 6,600/- under the Compensation Act, in addition to the compensation in the sum of Rs. 15,000/- based on the no fault liability which has been awarded to them under the provisions of Chapter VII-A of the Act.

3. Mr. Devinder Gupta seeks an adjournment on the ground that he would like to examine whether the amount to which appellants have been found entitled has been arrived at in accordance with law. Request granted. Adjourned to May 25, 1984.

4. Let the respondents deposit in the Registry of this Court the amount to which the appellants are held entitled under the two Acts aforementioned with interest at the rate of 6% per annum from the date of the institution of the claim petition under the Act (April 19, 1983) within a period of four weeks from today.

17-10-1984

5. The learned Counsel representing both the parties have been heard on the question whether the order passed by the Financial Commissioner (Development), whereunder compensation in the sum of Rs. 15,000/- awarded to the - appellants under the provisions of Chapter VII-A of the Act has been set off against the total compensation in the sum of Rs. 21,600/- found awardable to them under the provisions of the Compensation Act, and only the balance of Rs. 6,600/- has been awarded as net compensation, is in accordance with law.

6. Section 110-AA, which occurs in Chapter VIII of the Act, reads as under:

110-AA. Option regarding claims for compensation in certain cases. Notwithstanding anything contained in the Workmen''s Compensation Act, 1923 (8 of 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 VII-A, claim such compensation under either of those Acts but not under both.

(underlining supplied)

7. Sections 92-A, 92-B, 92-D, and 92-E, which find place in Chapter VII-A of the Act, read as under:

92-A. Liability to pay compensation in certain cases on the principle of no fault: (1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (I) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees,

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

92-B. Provisions as to other right to claim compensation for death or permanent disablement--(1) The right to claim compensation u/s 92-A in respect of death or permanent disablement of any person shall be in addition to any other right (hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation u/s 92-A in respect of death or permanent

disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/s 92-A and also in pursuance of any right on the principle of fault, the claim for compensation u/s 92-A shall be disposed of as aforesaid in the first place,

(3) Notwithstanding anything contained in Sub-section (1), where in respect of the death or permanent disablement of any person the person liable to pay compensation u/s 92-A is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and:

(a) if the amount of the first mentioned compensation is less than the amount of the second mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second mentioned compensation as is equal to the amount by which it exceeds the first mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or less than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

92-C, xxx xxx xxx xxx 92-D. Applicability of chapter to certain, claims under Act 8 of 1923,--The provisions of this chapter shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Workmen''s Compensation Act, 1923 (8 of 1923) resulting from an accident of the nature referred to in Sub-section (1) of Section 92-A and for this purpose, the said provisions shall with necessary modifications, be deemed to form part of that Act.

92-E. Overriding effect.--The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force.

(underlining supplied).

8. On a combined reading of these various provisions, it is apparent:

(1) that where the death or bodily injury gives rise to a claim for compensation under the Act as welt as under the Compensation Act, the person entitled to compensation will be entitled to lay a claim therefore under either one of those two Acts but not under both; however, such compensation is claimable under either of those Acts with out prejudice to the provisions of Chapter VII-A, that is, the preferment of claim under either Act does not debar proceedings for the enforcement of liability to pay compensation on the principle of no fault arising under the provisions of Chapter VII-A (See: Section 110-AA of the Act);

(2) that Chapter VII-A enacts special provisions governing the liability of the owner (s) to pay compensation in respect of death or permanent disablement

resulting from an accident arising out of the use of motor vehicle(s) on the principle of no fault and those provisions, inter alia, enact that: (i) the amount of compensation there under payable in respect of death of any person shall be a fixed sum of Rs. 15,000/- and in respect of permanent disablement shall be a fixed sum of Rs. 7500/- and (ii) the claim for such compensation or the quantum thereof shall not be defeated or, as the case may be, reduced, by reason of the wrongful act, neglect or default or on account of the share of the person concerning whom the claim has been made in the responsibility for his death or permanent disablement (See : Section 92-A of the Act);

(3) that the right to claim compensation under the provisions of the said Chapter is in addition to any other right founded on the principle of fault to claim compensation in respect of such death or permanent disablement under any other provisions of the Act or of any other law for the time being in force (See Section 92-B (1) of the Act):

(4) that notwithstanding the liability to pay compensation in a fixed sum under Chapter VII-A, where in respect of death or permanent disablement, the person liable to pay compensation is alsp held liable to pay compensation in accordance with the right of compensation on the principle of fault, such person must first discharge the liability to pay the compensation payable under the provisions of Chapter VII-A and if such compensation is equal to or less than the compensation payable in pursuance of the right on the principle of fault, he shall not be liable to pay any further compensation bat if such compensation is less, then ho shall be liable to pay only the balance amount, that is, the amount equivalent to the difference between compensation payable on account of the principle of no-fault liability and fault liability (See: Section 92-B(3) of the Act);

(5) that the provisions of Chapter VII-A. also apply in relation to any claim to compensation in respect of death or disablement of any person under the Compensation Act resulting from an accident arising out of the use of motor vehicle(s) and those provisions, with necessary modifications, shall be deemed to form part of the Compensation-Act (See Section 92-D of the Act); and

(6) that the provisions of Chapter VII-A have an overriding effect and they shall apply notwithstanding anything contained in other provisions of the Act or any other law for the time being in force (See Section 92-E of the Act).

9. For the purpose of the present case, the true effect of the combined operation of the various provisions referred to above is that though the right to claim compensation under the provisions of Chapter VII-A of the Act in respect of the death is in addition to the right to claim compensation in respect thereof under the provisions of the Compensation Act, the respondent are under a legal obligation to first discharge the liability to pay the compensation payable under the provisions of Chapter VILA and, if such compensation is less than the compensation payable under the provisions of the Compensation Act, only the balance amount, that is, the amount equivalent to the difference between the

compensation payable on account of the principle of no fault liability and that payable as per the Compensation Act liability, will have to be paid by the respondents. This result clearly follows on a combined reading of Section 92-B(1) and (3) as well as 92-D and 92-E of the Act. Although the provisions of Section 92-B(1) and (3) in terms refer only to the compensation payable on account of the principles of no fault liability and fault liability, its provisions would still be attracted when a claim for compensation made under the Compensation Act is being processed by virtue of the provisions of Section 92-D which enact that the provisions of Chapter VII-A shall with necessary modifications be deemed to form part of the Compensation Act and also on account of Section 92-E which gives an overriding effect to the provisions of Chapter VII-A. Accordingly where in respect of the death of any person, the liability to pay compensation arises under the provisions of Chapter VII-A as well as under the Compensation Act, the person liable to pay compensation under the Compensation Act will first pay the compensation under the provisions of Chapter VII-A if claimed and awarded, and if the amount of such compensation is less than the amount of compensation adjudged payable under the Compensation Act, he shall be liable to pay only so much of such compensation as is equal to the amount by which it exceeds the compensation payable under the provisions of Chapter VII-A. It is thus clear that the order passed by the Financial Commissioner (Development), in so far as it seeks to set-off or deduct a sum of Rs. 15,000/- from the compensation adjudged payable under the Compensation Act, is in accordance with law. The deduction accordingly made is fully justified having regard to the statutory provisions referred to above.

10. The order made by the Financial Commissioner (Development) is, howeyer, not in accordance with law in another respect. u/s 4-A, Sub-section (3), of the Compensation Act, where an employer is in default in paying the compensation due under the said Act within one month from the date it fell due, he may be directed to pay simple interest at the rate of six per cent per annum on the amount of compeasation due. On the facts and in the circumstances of the case, there is no reason why a direction with regard to the payment of such interest should not have been given. Under the circumstances, it appears to be just and proper to direct that the sum of Rs. 21,600/- will pepaid with simple interest at the rate of six per cent per annum from the expiry of a period of one month from the date of the accidental death till the date of payment or deposit. The order of the Financial Commissioner (Development) will stand modified accordingly. The amount becoming due and payable by way of compensation with interest will be deposited in the Registry of this Court within four weeks from the date of the receipt of a copy of this judgment. If the sum of Rs. 6,600/-has been deposited with the Commissioner for Workmen''s Compensation, Nahan, the deposit in the Registry of this Court will be for the balance amount. This order supersedes the direction given in the last paragraph of the order dated May 17,1984, with regard to the payment of interest at the rate of 6% per annum from the date of the institution of the claim petition under the Act (April 19,1983) in view of the fact

that the compensation is now being awarded under the Compensation Act and the provisions thereof must govern the payment of interest.

11. With the consent of the appellants, the amount of compensation receivable by them is apportioned amongst them equally. The compensation amount will be paid by the Registry/Commissioner for Workmen''s Compensation, Nahan, to the learned Counsel for the appellants or a person duly authorised by him on the following conditions.

(1) The amount apportioned in favour of the minor claimants will be invested in separate fixed deposits in the name of each minor claimant as per his respective share, with a Nationalised Bank for a period co-terminus with the date on which each minor attains majority or sixty three months whichever period is longer. The fixed deposit receipts will be produced before the Registrar and will continue to remain in his custody. The fixed deposits will not be encashable before the due date of maturity nor will any loan be permitted to be raised against them save and except with the prior permission of this Court. Such an endorsement will be got made on the fixed deposit receipts itself on the strength of this order. The interest accruing due periodically on each fixed deposit will, however, be payable to the first appellant (mother of the minors) to be applied towards the maintenance and education of the minors.

(2) The amount apportioned in favour of the first respondent (widow) will likewise be invested in a fixed deposit with a Nationalised Bank for a period of sixty three months on other terms similar in all respects as are prescribed earlier with regard to the fixed deposits of minors. The interest on such deposit will be payable periodically to the first respondent.

12. In view of the orders made in the aforesaid terms, the appeal stands dismissed as withdrawn.

13. Dasti order on usual terms.