
(1996) 10 BOM CK 0100
In the Bombay High Court
Case No : First Appeal No. 89 of 1992

Safiyabi Pathan and others

APPELLANT

Vs

Wamanrao Surkar and others

RESPONDENT

Date of Decision : 15-10-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 92

Motor Vehicles Act, 1988 — Section 149(2), 166

Workmens Compensation Act, 1923 — Section 140, 3, 4

Citation : (1998) 1 ACC 133 : (1997) ACJ 906 : (1998) 2 BomCR 420 : (1998) 3 LLJ 1087 : (1997) 1 MhLj 834

Hon'ble Judges : B.U. Wahane, J

Bench : Single Bench

Advocate : N.S. Bhattad, for the Appellant;

Final Decision : Dismissed

Judgement

B.U. Wahane, J.—In this first appeal, the appellant-Safiyabi and others challenged the findings recorded by the learned Commissioner under the Workmen's Compensation Act, Wardha, on 24th October, 1991, in W.C.C. No. 7/87, rejecting on the claim of the appellants on the ground that the application under the Workmen's Compensation Act is not tenable. Undisputedly, Jalitkhan-husband of the appellant No. 1 and the father of the appellant Nos. 2, 3 and 4, died while working as Coolie on Truck No. M.T.G. 7288, near village Saled, Tahsil Deoli, District Wardha, on 3-7-1985. The appellants/claimants instituted proceedings u/s 92(a) of the Motor Vehicles Act, 1939 and claimed compensation under no fault liability of RS. 15,000/-. It is stated that none appeared on behalf of the respondents in the proceedings u/s 92(a) of the Act. The order was passed on 6-4-1987 by the Motor Accident Claims Tribunal granting compensation of Rs. 15,000/- on the basis of no fault.

2. The appellants instituted no proceeding u/s 166 of the Motor Vehicles Act, 1988, instead approached the Commissioner, Workmen's Compensation Act,

Wardha, and claimed Rs. 75,000/- from the respondents. The respondent No. 2 New India Insurance Company Ltd. filed the written statement and raised preliminary objection to the effect that once the claimants have chosen the forum under the provisions of Motor Vehicles Act, they are prevented from choosing or approaching the forum under the provisions of Workmen's Compensation Act.

3. None appeared for respondent Nos. 1 and 3 inspite of the notices served upon them. None appeared for the respondent No. 2 - Insurance Company.

4. Shri Bhattad, the learned Counsel for the appellants vehemently submitted that there is no bar to choose either of the provisions of the Motor Vehicles Act or Workmen's Compensation Act. Further it is submitted that the proceedings under the provisions of section 140 of the Motor Vehicles Act, 1988 are independent proceedings only to determine no fault liability. To get the additional compensation than the compensation granted under the provisions of section 140 on no fault basis, it is for the claimant either to approach under the provisions of section 166 of the Motor Vehicles Act, 1988, or the provisions of Workmen's Compensation Act or not to approach at all. Section 140 of the Motor Vehicles Act, 1988 reads as under :

"(1) Where 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 (1) in respect of the death of any person shall be a fixed sum of twenty-five 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 twelve thousand 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."

5. Shri Bhattad, the learned Counsel for the appellants, submitted that the provisions of section 110-A-A (section 167 of the New Act) of the Motor Vehicles

Act, 1939, provide bar to institute simultaneous proceedings, claiming compensation under the provisions of both the statutes i.e. Motor Vehicles Act and the Workmen's Compensation Act. The purpose is that no person can claim compensation twice. Section 110-A-A (section 167 of the New Act) of Motor Vehicles Act, 1939, reads as under :

"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."

6. According to Shri Bhattad, it is clear from the above provisions that there is no hurdle to institute proceeding under the provisions of Workmen's Compensation Act, Thus, according to the learned Counsel, the bar is for institution of both the proceedings and not for filing the proceedings under either of the Act.

7. Considering to submissions of Shri Bhattad, the learned Counsel for the appellants, there is no dispute as regards claiming the compensation either under the provisions of section 140 and 166 of the Motor Vehicles Act, 1988, or under the provisions of Workmens Compensation Act, 1923. Here in this case, only question arises that once the appellants/claimants have chosen to file an application u/s 92-A of the Motor Vehicles Act, 1939, and the compensation was granted to the appellants/ claimants, whether such claimants, instead of filing separate proceedings u/s 166 of the Motor Vehicles Act, 1988, can approach the Commissioner, under the Workmen's Compensation Act, for grant of compensation u/s 19 of the Act. Undisputedly, the Insurance Company or the Insurer is entitled to raise the defence u/s 149 of the Motor Vehicle Act, 1988, on the grounds contemplated u/s 149(2) of the Motor Vehicles Act, 1988, to show that the insurer is not liable to pay any compensation to the claimants. The Insurance is entitled to raise following defence as contemplated u/s 149(2) of the Motor Vehicles Act, 1988.

"149(2)(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract or insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor-cycle; or

(ii) a condition excluding driving by a named person or persons or by any person

who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular."

8. Under the provisions of Workmen's Compensation Act, the Commissioner has to make an enquiry as to whether the insured or the deceased received injuries or died during the course of employment. It is well settled principle of law that if there is an insurance of the workers or vehicles of the employers, the insured being identified by the employer, the Insurance Company is liable to pay the compensation. However, the enquiry is not contemplated considering the defence put forth by the Insurance Company under the provisions of section 149(2) of the Motor Vehicles Act, 1988. In the instant case, undisputedly, the appellants/claimants have not instituted any proceedings under the provisions of the section 166 of the Motor Vehicles Act, 1988 (110-A of Old Act). The Insurer i.e. respondent No. 2 thereby is precluded from raising defence as provided u/s 149 of the Motor Vehicles Act, 1988 (96 of old). No detailed enquiry is contemplated under the provisions of Workmen's Compensation Act. The Insurance Company is estopped or prevented from proving its case.

9. Shri Bhattad, the learned Counsel for the appellants, submitted that under the provisions of both the enactments, there being no bar to approach or take recourse Of both the enactments, the Insurance Company has to identify the employer and pay the compensation. The learned Counsel further Submitted that there is no specific provision in either of the enactments that the amount of compensation paid u/s 140 of the Motor Vehicles Act, 1988 (92-A of Old Act), is adjustable while granting the compensation under the provisions of section 166 of the Motor Vehicles Act, 1988 (110-A of the Old Act). However, there is no specific provisions to refund the amount received by the claimants under no fault liability, even if the Insurance Company proves its defence u/s 149 of the Motor Vehicles Act, 1988(96 of the Old Act).

10. The submissions made by the learned Counsel if constructed as stated, then one has to conclude that the provisions of the Motor Vehicles Act and the provisions of the Workmen's Compensation Act are enacted only for the benefit and interest of the claimants, and the employer or the insurer as the case may be has no say. Under the circumstances, the insurers shall have no say except to fulfil the liability under the insurance policy. The general principle of law is that the Court has to accord an opportunity to the parties and after hearing them, to adjudicate the matter according to the law on the basis of the material placed on record. If in the instant case the appellants/claimants would have taken the recourse under the provisions of section 166 of Motor Vehicles Act, 1988(110-A

of Old Act), the defence as provided under the provisions of section 149 of Motor Vehicles Act, 1988 (section 96 of Old Act), would have been available to the respondent-Insurance Company. As the application u/s 166 of the Motor Vehicles Act, 1988 (110-A Old Act), has not been filed, the respondent No. 2- Insurance Company is prevented to prove its case to the effect that it is not liable to pay compensation. If the Court is going to accept the submissions of Shri Bhattad, the learned Counsel for the appellants, in other words, it can be said that the courts will have to see only the convenience of the claimants and the Insurance Company is estopped from proving its defence. In my humble view, it could not be the intention of the legislature while enacting the provisions of both the enactments.

11. Considering the provisions of both the enactments, viz. Motor Vehicles Act and Workmen's Compensation Act, 1923, the claimants took recourse of the provisions of section 92-A (section 140 of the New Act), but not filed claim petition under the provisions of section 110-A of the Motor Vehicles Act, 1939 (166 of the New Act). Considering the facts and circumstances, only irresistible conclusion can be drawn that the claimants not being able to prove the case of negligence or omission on the part of the driver or the employer and thus to claim compensation u/s 110-A of the Motor Vehicles Act, 1939 (166 of the New Act), deliberately they have approached before the Commissioner under the Workmen's Compensation Act, 1923, wherein the Commissioner has only to see that the accident occurred and the workman either received injury, permanent disablement or death during the course of his service and nothing more.

12. Giving conscious thought to the submissions of the learned Counsel and the facts and circumstances of the case, the view taken by the Commissioner under the Workmen's Compensation Act, 1923, appears to be just and proper. In the result, I do not find any merits in the instant appeal and, therefore, the same is dismissed. No order as to costs.

13. Appeal dismissed.