
(1991) 11 BOM CK 0027
In the Bombay High Court
Case No : F.A. No. 839 of 1984

Shantabai Parshuram Mule and Others APPELLANT
Vs
Sharda Prasadsingh and Others RESPONDENT

Date of Decision : 20-11-1991

Acts Referred:

Employees Compensation Act, 1923 — Section 10, 3, 8

Citation : (1992) 2 ACC 677 : (1992) ACJ 270 : (1991) MhLj 1542

Hon'ble Judges : P.S. Patankar, J;H.D. Patel, J

Bench : Division Bench

Advocate : S.L. Kapse, for the Appellant; A.A. Rizvi and A.R. Kudroli, for the Respondent

Final Decision : Allowed

Judgement

H.D. Patel, J.—Aggrieved by the judgment of the Motor Accidents Claims Tribunal dated 29th June, 1981 in A.C.C. No. 36 of 1978 the appellants, who are the legal heirs of the deceased Parshuram Tukaram Mule, have filed this appeal.

2. The deceased Parshuram met with an accident on 15.3.1978 while he was driving car No. MTY 3806 as a driver of the State Transport Corporation. The car was on its way to Ratnagiri. The said car crossed Mahad and while proceeding to its destination on Bombay-Goa Road a motor tanker No. MNP 7952 belonging to the respondent No. 1 and driven by the respondent No. 2 in course of his service being in employment of respondent No. 1, coming from opposite direction dashed against the car No. MTY 3806 with the result that the deceased Parshuram as well as another occupant of the car Dinanath Shirodkar received multiple injuries and both died on the spot. The third occupant of the car Pradip Sawant was seriously injured. There is no dispute that Parshuram Tukaram Mule died having received personal injuries caused by accident arising out of and in the course of employment.

3. The appellants filed an application on 8.9.1978 seeking compensation

amounting to Rs. 1,00,000/- before the Motor Accidents Claims Tribunal. The respondents resisted the claim on several grounds. Before the matter could be taken up for evidence an application came to be filed by the respondents that the appellants received compensation of Rs. 23,100/- from the employer of the deceased Parshuram, namely, the Maharashtra State Road Transport Corpn. and hence they are debarred from preferring this claim u/s 110-AA of the Motor Vehicles Act. On a request a preliminary issue was framed by the learned Member of the Motor Accidents Claims Tribunal on the maintainability of the application. The appellants in their reply accepted the fact of having received the compensation amount from the Court of Commissioner for Workmen's Compensation, Thane, though they denied its effect. It seems that after hearing the parties the learned Member of the Motor Accidents Claims Tribunal held that the application was barred in view of the compensation awarded [o the applicants through the Court of Commissioner for Workmen's Compensation, Thane. Accordingly the application came to be dismissed. It is this finding which is under challenge in this appeal.

4. After hearing the rival contentions of the parties only one point falls for determination and that point is, whether the claim for compensation filed before the Motor Accidents Claims Tribunal is tenable in the circumstance that the appellants have accepted the amount of Rs. 23,100/-deposited by the employer, the Maharashtra State Road Transport Corporation, with the Commissioner of Workmen's Compensation u/s 8 of the Workmen's Compensation Act, 1923.

5. Before the question could be answered, some more facts relevant for the purpose need to be narrated. The deceased Parshuram having suffered injuries caused by accident arising out of and in the course of employment, his employer was also duty bound to comply with the relevant provisions of the Workmen's Compensation Act. In terms of Section 8 of the said Act the employer of the deceased Parshuram deposited the amount due with the Commissioner of Workmen's Compensation. Upon deposit of the amount, no option was left with the Commissioner of Workmen's Compensation but to issue notices to the dependants whose names were disclosed by the employer while depositing the amount. The appellants appeared before the Commissioner of Workmen's Compensation and filed an application dated 18.11.1978 stating that they are dependants of the deceased Parshuram amongst whom the compensation may be distributed. The Commissioner of Workmen's Compensation recorded the statement of the first appellant and vide judgment dated 20.11.1978 ordered to distribute the compensation amongst the dependants in the manner set out therein. It is under these circumstances that the compensation was received by the appellants.

6. It cannot be lost sight of the fact that the appellants never initiated the proceedings under the Workmen's Compensation Act. It was the employer of the deceased Parshuram who had moved the Commissioner of Workmen's Compensation and rightly so being a requirement of law, that is, Section 8 of the

Workmen's Compensation Act. This is one of the modes prescribed for payment of compensation under the Workmen's Compensation Act. The other mode prescribed by the said Act is by moving an application u/s 10 in the court of Commissioner of Workmen's Compensation necessarily by the dependants of the deceased. Such a course was not adopted by the appellants. As a matter of fact the appellants had moved the Motor Accidents Claims Tribunal on 8.9.1978, that is, much before the application was filed for distribution of the amount of compensation in the court of Commissioner of Workmen's Compensation. This clearly indicates that the appellants had opted to claim compensation from the Motor Accidents Claims Tribunal, Alibagh.

7. We will now consider the effect of the appellants filing an application for distribution of amount deposited with the Commissioner of Workmen's Compensation in compliance with Section 8 of the Workmen's Compensation Act. According to the respondents, the application is hit by Section 110-AA of the Motor Vehicles Act, which the appellants strongly refute. Section 110-AA reads as follows:

110-A A.-Notwithstanding anything contained in the Workmen's Compensation Act, 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 claim such compensation under either of those Acts but not under both.

The section envisages that where death or bodily injury to any person gives rise to a claim for compensation under the Motor Vehicles Act as well as the Workmen's Compensation Act, the claimant has option to choose out of the two forums. As soon as one forum is chosen, the other cannot be resorted to. Obviously the intention of the legislature is to prevent the claimant from approaching both the forums and claim the benefits twice, may be from different persons. A similar provision is also to be found in the Workmen's Compensation Act and that provision is contained in Sub-section (5) of Section 3 which is quoted below.

3(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a civil court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any court of law in respect of any injury-

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

The above provision is slightly different from Section 110-A A. In order to

institute a claim under Sub-section (5) of Section 3 of the Workmen's Compensation Act, it is required and the phraseology of that clause so indicates that the workman must have initiated a claim for compensation in respect of the injury before the Commissioner. The word "initiated" used in section makes it imperative that a litigant who may be said to be dominus litis must affirmatively go before the authority constituted under the Workmen's Compensation Act and say that he wanted to avail of his right to compensation as provided by the Workmen's Compensation Act, the liability for which is created by Section 3 of that Act. Even Sub-section (5) of Section 3 of the Workmen's Compensation Act gives an option between enforcing right to compensation under the Workmen's Compensation Act against the employer and claiming damages in a court of law or special statute incorporating the common law rights. To the extent of the choice of forum both the provisions, namely, Section 110-A A of the Motor Vehicles Act and Section 3(5) of the Workmen's Compensation Act can be said to be similar though the language used is different.

8. Mere filing of an application by the appellants for distribution of the amount deposited by the employer before the authority constituted under the provisions of the Workmen's Compensation Act can never be treated as a claim "instituted" within the meaning of Sub-section (5) of Section 3 of that Act. As discussed above, a claim is required to be made u/s 10 and there is nothing to suggest that any claim was made by the appellants as contemplated by that section. All that they did was that they filed an application which they were called upon to do. It may be relevant to repeat here that the application was filed on 18.11.1978 by which time the appellants had already chosen the forum for claiming compensation by filing an application before the Motor Accidents Claims Tribunal. The appellants never called upon the employer to deposit the amount. It was a voluntary act of the employer. It is difficult for this Court to accept that the appellants had instituted a claim as such within the meaning of Sub-section (5) of Section 3 of the Workmen's Compensation Act and if that is the correct view of the matter, then it follows that there cannot be a bar of Sub-section (5) of Section 3 of the Workmen's Compensation Act. Such is the view expressed in *Napoleon Fernandes v. Union of India* 1977 ACJ 20 (Bombay). If there cannot be a bar of Sub-section (5) of Section 3 of the Workmen's Compensation Act, mere acceptance of money by the appellants through the Commissioner of Workmen's Compensation also cannot be construed to mean that the appellants have made a claim to that authority, thereby ousting the jurisdiction of the Motor Accidents Claims Tribunal. We hence cannot agree with the finding of the learned Member of the Motor Accidents Claims Tribunal that the application is barred in view of the compensation already awarded through the Commissioner of Workmen's Compensation.

9. In the aforesaid circumstances, the appeal is allowed. The impugned judgment is set aside and the case is remanded back for decision in accordance with law. Already near about 13 years have lapsed since the occurrence of the accident and the case is still at the stage of evidence. It requires expeditious disposal.

Accordingly, the learned Member of the Motor Accidents Claims Tribunal is directed to give priority to this case and decide the same as expeditiously as possible. In the circumstances of the case, the parties are directed to bear their respective costs.