
(2013) 08 OHC CK 0024
In the Orissa High Court
Case No : F.A.O. No. 457 of 2008

Tanulata Pradhan and Another

APPELLANT

Vs

Mahendra Prasad and Another

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Citation : (2013) 116 CLT 821 : (2014) 1 ILR (Ori) 542 : (2013) 4 LLJ 452

Hon'ble Judges : B.N. Mahapatra, J

Bench : Single Bench

Advocate : Pradeep Ku. Mishra, P.P. Misra, M.R. Mohanty and D. Behera, for the Appellant; A.K. Rath and A.K. Nath for R-2, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Mahapatra, J.—The present appeal has been directed against judgment dated 28.07.2008 passed by the Assistant Labour Commissioner-cum-Commissioner for Workmen's Compensation, Orissa, Bhubaneswar (for short, "the Commissioner") in W.C. Case No. 53 of 2004. Appellants' case in a nutshell is that on 23.09.2001 at about 12.20 P.M. while the deceased-Bishnudev Pradhan was driving a Tata Sumo bearing registration No. OR-02-S-0006 and going towards Puri, near Sakhigopal, the offending bus bearing registration No. OR-02-G-3519 coming from the opposite direction being driven in a rash and negligent manner dashed the Tata Sumo. On account of such accident, the driver of the Tata Sumo succumbed to the injury. The said accidental death being a tortfeasance the legal representatives of deceased filed one MACT Case bearing Misc. Case No. 474 of 2001 against the owner of the bus, Bhubanananda Satpathy and the insurer of the said Bus, Oriental Insurance Company Limited. In the said MACT Case, legal representatives of the deceased got the compensation of Rs. 2,75,000/- from the insurer of the offending bus, i.e., Oriental Insurance Company. Thereafter, the said legal heirs of the deceased filed another case against the employer-owner of the Tata Sumo, Mahendra Prasad and his insurer, United India Insurance Company Ltd. for compensation on

account of death of the deceased-Bishnudev Pradhan which was caused out of and in course of his employment bearing W.C. Case No. 53 of 2004 in the Court of the Assistant Labour Commissioner-cum-Commissioner for Workmen's Compensation, Orissa, Bhubaneswar.

2. After hearing both the sides, learned Commissioner dismissed the case of the claimants on the ground that since legal heirs of the deceased have already got the compensation under the Motor Vehicles Act, they will not get compensation under the Workmen's Compensation Act in W.C. Case No. 53 of 2004. Hence, the present appeal.

3. Mr. Pradip Kumar Mishra, learned counsel appearing on behalf of the appellants, submitted that the judgment passed by the learned Commissioner is not sustainable in law where a tort-feasor and the employer are two separate persons. It was submitted that since the employer has paid specific premium to indemnify the risk of the employee/workman under the Workmen's Compensation Act receipt of compensation from the tort-feasor under the M.V. Act is not a bar for the applicant-claimants to proceed against the employer of the deceased to receive compensation under the W.C. Act which arose out of and in course of employment of the deceased.

Mr. Mishra further submitted that the claimant-appellants are entitled to get the compensation from the employer-insurer under W.C. Act as no case has been filed against the said owner and the insurer under the M.V. Act, which is the prohibited u/s 167 of the M.V. Act. Section 167 of the M.V. Act speaks of "option regarding claims for compensation in certain cases". It is submitted that in view of this Section, the workman was given option to proceed against his employer and insurer, under either of the two Acts, i.e., M.V. Act or W.C. Act and not both. In the present case, the legal heirs of the deceased filed separate claim case against separate tort-feasor where the deceased's employer and the insurer were not made parties. The said case under the M.V. Act has no relevance to the case filed against the employer and the insurer under the W.C. Act. The present appellants are not debarred to proceed against the employer and the insurer under the W.C. Act when they have chosen to proceed under the W.C. Act. Hence, there is no ambiguity in Section 167 of the M.V. Act. It is further submitted that when the tort-feasor and the employer are two separate persons and the applicants have no option to proceed against the tort-feasor under both the Acts, compensation received under the M.V. Act from the tort-feasor will not be a bar for the applicants to proceed against the employer under the W.C. Act where specific premium and the policy was taken by the employer to cover the risk of the employee/workman. The appellants simultaneously have not chosen to proceed against the employer and his insurer under the M.V. Act. Therefore, case against the employer under the W.C. Act is maintainable and they will get compensation under the W.C. Act. In support of his contention, Mr. Mishra relied upon the judgment of Gujarat High Court in Nasimbanu Vs. Ramjibhai Bachubhai Ahir, . Concluding his argument, Mr. Mishra submitted that the impugned order is

liable to be set aside and suitable direction may be issued to the Commissioner to assess compensation as per the evidence and materials available on record or necessary opportunity may be given to the parties to adduce further evidence so as to award just compensation.

4. Per contra, Dr. Rath, learned counsel appearing for the respondent-Insurance Company submitted that there is no infirmity/ illegality in the impugned judgment passed by the Commissioner u/s 167 of the M.V. Act where death or bodily injury to any person gives rise to claim for compensation under the M.V. Act or W.C. Act. Present appellants are entitled to compensation under either of these two Acts but not both. Dr. Rath relied upon the decision of the Hon''ble Supreme Court in the case of Sanjeev Kumar Samrat Vs. National Insurance Company Ltd. and Others, and decisions of this Court in the case of National Insurance Company Ltd. Vs. Harerrushna Sahu and Others, and New India Assurance Co. Ltd. Vs. Pennamma Kurien and Others, .

5. On the rival contentions raised by the parties, only question that falls for consideration by this Court is:

Whether in view of the provision of Section 167 of the M.V. Act, the present claimant-appellants having already awarded compensation for death of the deceased in the accident in question under the M.V. Act are further entitled to get compensation from the deceased's employer and the insurer under the W.C. Act ?.

6. To deal with the above question, it is necessary to refer to Section 167 of the M.V. Act, 1988, which reads as follows:-

167. Option regarding claims for compensation in certain cases - 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 without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

7. A plain reading of Section 167 extracted above makes it clear that where a death or bodily injury to any person gives rise to claim under the M.V. Act, 1988 as well as W.C. Act, 1923, the said person is entitled to compensation under either of the Acts but not under both. Contention of the appellants that they have claimed compensation from the tort-feasor under the M.V. Act wherein the owner under whom the deceased was working and his insurer were not party does not merit consideration. The expression "claim such compensation under either of those Acts but not under both" has no reference to the person against whom a claim has to be made. Therefore, irrespective of the fact that the person against whom a claim can be entertained under the M.V. Act is different from the person against whom a claim can be made under the W.C. Act, the bar of Section 167 of the M.V. Act will apply. The rationale behind Section 167 of the M.V. Act is that once the death or bodily injury to any person gives rise to a cause of action for

claiming damages in favour of the person he cannot be compensated twice for the self same cause.

8. At this juncture, it is necessary to refer to some of the judicial pronouncements of the Hon''ble Supreme Court and High Courts.

The Hon''ble Supreme Court in the case of Sanjeev Kumar Samrat (supra) held as under:-

21. At this stage, we may usefully refer to Section 167 of the Act which reads as follows:

167. Option regarding claims for compensation in certain cases - 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 without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

From the aforesaid provision, it is quite vivid that where a death or bodily injury to any person gives rise to a claim under the Act as well as under the 1923 Act, the said person is entitled to compensation under either of the Acts, but not under both.

9. This Court in Harekrushna Sahu (supra) held as under:-

5. Mr. B. Choudhury, learned Counsel for the Appellant, raises only one point, viz. that in view of the provisions contained in Section 110AA of the Act the claimant-Respondent Nos. 1 and 2 having already been awarded compensation for the death of Bhagaban in the accident in question as evidenced by Ext. 2, under the Workmen's Compensation Act, no further claim by them was entertainable under the Act. It may be mentioned here that this point though was raised before the Tribunal was negatived by it and hence the appeal. The point raised by Mr. Choudhury requires careful scrutiny.

The provisions u/s 110AA of the Act may be quoted below:

Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (Act VIII of 1923), where the death of a or bodily injury to any person gives rise to a claim for compensation under this Act and also under Workmen's Compensation Act, 1923, the person entitled to compensation may claim such compensation under either of those Acts but not under both.

The plain meaning of the aforesaid provisions to my mind is this: if death of or bodily injury to any person gives rise to a claim for compensation and if such claim is entertainable both under the Workmen's Compensation Act as well as under the Act, the claimant has the option to choose any one of the two forums, viz., either the forum under the Workmen's Compensation Act or the forum under the Act. The claimant by the provisions of Section 110AA of the Act quoted above is debarred from preferring claims both under the Workmen's

Compensation Act and also under the Act. The word "claim" used in section has no reference to the person against whom "a claim has to be made. At least, the language used in the section does not say so. That being the position, irrespective of the fact that the person against whom a claim can be entertained under the Workmen's Compensation Act is different from the person against whom a claim can be made under the Act, the bar of Section 110AA of the Act will apply. The reason behind Section 110AA of the Act seems to have been based on a very sound principle. Once the death of or bodily injury to a person gives rise to a cause of action for claiming damages in favour of a person, he cannot be compensated for the same cause twice. True, under the Workmen's Compensation Act, limit of damages payable is prescribed whereas, under the Act there is no such limit. The reason is obvious. Under the Workmen's Compensation Act, the authority which is to decide quantum of damages is concerned with the benefit which the claimant was deriving out of the employment of the deceased person before his death under his employer whereas under the Act, the tribunal has to assess the benefit which the claimant was deriving from the person who died in a motor accident while alive irrespective of his employment under any particular master, because the tribunal does not decide the liability of the master, but the liability of the person guilty of tort. In a case before the Tribunal under the Act, the Tribunal, while assessing compensation, takes into consideration the income the deceased was having from various sources including his income in course of his employment under a particular master. In a case under the Workmen's Compensation Act, the liability of the master is only quantified. The intention of legislature in enacting Section 110-AA of the Act is to prevent a claimant from making a claim twice on account of death of or bodily injury to any person in a motor accident. Section 3(5) of the Workmen's Compensation Act also prevents a claim for damages being made twice on account of death of or bodily injury to any person in an accident. The said provision may be 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 injury before a commissioner; or

(b) if an agreement has 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 clearly lays down that a workman has a right to compensation in respect of any injury done to him while discharging his duty as such. For the enforcement of this right he can institute a civil suit in a civil court for damages in respect of the injury either against the employer or any other

person. Once he has gone to the civil court for damages, he is debarred from claiming compensation under the Workmen's Compensation Act against his employer. It has also been provided in the aforesaid provision that no suit for damages shall be maintainable by a workman in any court of law in respect of any injury if he has instituted a claim to compensation in respect of the said injury before a commissioner under the Act, or if by an agreement between him and his employer provision is made for payment of compensation in respect of the injury in accordance with the provisions of the Workmen's Compensation Act. The words "Court of law" appearing in Section 3(5) of the Workmen's Compensation Act have been interpreted by several judicial pronouncements to include a Claims Tribunal under the Act. In the decision reported in Radhabai Bhikaji Vs. Baluram Daluram, the High Court of Madhya Pradesh has held that Claims Tribunal under the Motor Vehicles Act is a civil Court for the purposes of prohibition contained in Section 3(5) of the Workmen's Compensation Act. Mr. Justice H.R. Krishna speaking for the Court in that decision has observed as follows:

I would understand by a "Civil Court" the same as "any court of law" used later on in the same Subsection. The word "Civil Court" has not been defined in Section 2 of the Act, and the entire trend of Section 3(5) is towards prohibition of duplication of proceedings not merely in a court functioning under the CPC or the local civil Courts Act but any court" competent to notice the injury and grant compensation such as any statutory tribunal, for example, the Motor Accidents Claims Tribunal.

Before the commencement of the Motor Vehicles Act claim for damages in respect death of or bodily injury to any person who was a workman was entertainable both under the Workmen's Compensation 1923 and in any civil Court. To prove duplication of the claim in two forums Section 3(5) of the Workmen's Compensation Act made the provision that once the claimant institutes a proceeding for compensation under the Workmen's Compensation Act he is debarred from instituting a suit for damages in the civil Court and vice-versa. After the commencement of the Motor Vehicles Act, 1939 (Act IV of 1939) civil Courts jurisdiction to entertain claims in respect of damages for the death of or bodily injury to a person in a motor accident was ousted and Claims Tribunal was constituted under that Act to entertain such claims. The provision contained in Section 3(5) of the Workmen's Compensation Act makes it abundantly clear that even where a workman has instituted a suit for damages for the injury sustained by him in course of discharging his duties under a particular master against a person other than the master, still then he is precluded from getting compensation against his own master under the Workmen's Compensation Act even though in the civil suit his claim for damages was not against his employer, but against another person. The intention of the legislature is, therefore, very clear and what is intended to be prevented is duplication of claim proceedings irrespective of whether the person against whom the claim is made is the same or different. To bring in harmony the provision contained in Section 3(5) of the

Workmen's Compensation Act with the provisions in the Motor Vehicles Act the legislature intentionally by way of amendment introduced Section 110-AA of the Act, because unless that was done a person who has made a claim under the Workmen's Compensation Act will be free to make a claim under the Act for compensation for the same accident and would defeat the very purpose of Section 3(5) of the Workmen's Compensation Act. At the risk of repetition I may here once again point out that the word "claim" used in Section 110AA of the Act does not refer to the person or persons against whom the claim has to be preferred. The bar contained in Section 110AA of the Act is an absolute bar in respect of any claim which arises out of a motor accident under the Act irrespective of the person or persons against whom the claim is made, the reason being as has been stated earlier to prevent duplication of claim. The contention of Mr. Choudhury is, therefore, bound to prevail.

10. The Hon"ble Kerala High Court in the case of Pennamma Kurien (supra) held as under:

8. The said principle can be discerned from the words employed in Section 110-AA itself, "where death of or bodily injury of any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act," then only the claimant is debarred from making claims under both statutes as he is obliged to select only one of them. The bar would operate only if death or bodily injury to a person "gives rise to a claim" for compensation under both Acts. In other words, if death or bodily injury to a person does not give rise to a claim under any one of the Acts, there would be no bar to making a claim under the other Act even if he had made an unsuccessful move under the other Act earlier. Dismissal of an application under one of the Acts would tantamount to a finding that no legal claim arose under that Act.

11. In view of the above settled legal proposition, the decision of the Gujarat High Court in the case of Nasimbanu (supra) upon which reliance has been placed by the appellants is of no help to them.

12. In the fact situation, this Court does not find any infirmity/illegality in the impugned judgment warranting interference of this Court. In the result, the Appeal stands dismissed.