
(1980) 02 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2757 of 1979

Trading Engineering

APPELLANT

Vs

Nirmala Devi and Another

RESPONDENT

Date of Decision : 05-02-1980

Acts Referred:

Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1939 — Section 110
Workmens Compensation Act, 1923 — Section 2, 3(5), 4

Citation : (1980) ACJ 230 : AIR 1980 P&H 115 : (1980) 2 ILR (P&H) 385

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Judgement

1. This is a petition under Article 227 of the Constitution of India, against the order of the Commissioner under Workmen's Compensation Act, dated 14th September, 1979.

2. One Shri Ram Chander, workman, resident of Sohna, Dist. Gurgaon, died in an accident on 6th January, 1976. His: widow, Shrimati Nirmala Devi, respondent, filed an application under the Workmen's Compensation Act, 1923, on 13th November, 1978, claiming death compensation of her husband. Along with that application, an application for condonation of delay u/s 5 of the Indian Limitation Act, was also filed in the written statement filed on behalf of the employer, an objection was taken that the application was not maintainable, as the widow has already received Rs. 10,000/- under the Motor Vehicles Act, 1939, as she had applied for compensation along with the parents of her deceased husband in the Court of the Motor Accident Claims Tribunal, Gurgaon, and she was awarded Rs. 10,000/-. It was also stressed that the application is time-barred and also barred-under Section 110-AA of the Motor Vehicles Act, 1939. On the pleadings of the parties the learned Commissioner framed the following issues:--

I. Whether the present application is maintainable in view of Section 110-AA of

the Motor Vehicles Act, 1939, and Section 3(5) of the Workmen's Compensation Act, 1923?

2. Whether the accident arose out of and during the course of employment?

3. Whether the claim application is barred by the limitation ?

4. Relief

5. Whether the present application is barred by the res judicata?

Issues Nos. 1, 3 and 5 were treated as preliminary. In the present petition, the main contest is on issue No. 1. The learned Commissioner decided this issue in favour of the claimant. The view taken by him is that she was awarded Rs. 10,000/- by the Motor Accident Claims Tribunal, whereas under the Workmen's Compensation Act, she is entitled to Rs. 18,000/-, and hence her claim for Rs. 10,000/- can be deducted, which, according to him, is barred by Section 110-AA of the Motor Vehicles Act.

3. In order to appreciate the contention of the learned counsel for the petitioner, reproduction of Section 110-AA of the Motor Vehicles Act is necessary. It reads thus:--

"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 claim such compensation under either of those Acts but not under both". From the language of this section it is quite clear that a person entitled to compensation under both the Acts may claim such compensation under either of those Acts, but not under both. In support of this, a judgment of the Himachal Pradesh High Court, reported as Smt. Gayatri Devi v. Tani Ram AIR 1976 Him Pra 76 may be referred to. In para 9 thereof, it has been observed, that:--

"Therefore, the position now was that a claim for compensation can be made either under the Workmen's Compensation Act or under the Motor Vehicles Act. The difference between the nature and legal incidents of a claim under the Workmen's Compensation Act and a claim made in a common law suit continues to be reflected between a claim made under the Workmen's Compensation Act and a claim made under the Motor Vehicles Act. The basis of the two claims differ each other, and therefore, until 1970 it was possible to obtain relief on both claims. It may be observed that while S. 3(5) of the Workmen's Compensation Act compels a workman to choose between a common law suit and a proceeding under that Act, a corresponding restriction was wanting in respect of a claim under the Motor Vehicles Act and a claim under the Workmen's Compensation Act. In order to allow a claim only under one of the two Acts, the Motor Vehicles (Amendment) Act, 1969 inserted Sec 110-AA in the Motor Vehicles Act. The section provides:

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The amendment.. came into effect on March 2, 1970. With effect from that date a person entitled to compensation can make a claim either under the Workmen's Compensation Act or under the Motor Vehicles Act. He cannot claim compensation under both Acts and thus obtain compensation twice over."

4. The learned counsel for the respondent was unable to support the order of the learned Commissioner. He however, referred to Section 2(1)(c) of the Workmen's " Compensation Act, 1923, wherein the term "compensation" has been defined. Reference was also made to Section 4 thereof which deals with the amount of compensation to be awarded"" under the Act. However I do not find any relevancy of these provisions for deciding the controversy between the parties in this petition.

5. For the reasons recorded above, this petition succeeds and the order of the Commissioner is hereby quashed However, there will be no order as to costs.

6. Petition allowed.