

(1991) 10 KAR CK 0005
In the Karnataka High Court

United India Insurance Co. Ltd. and another	APPELLANT
Vs	
Kadarbi and others	RESPONDENT

Date of Decision : 11-10-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 110 AA

Citation : (1992) ACJ 472 : (1992) 75 CompCas 308 : (1991) ILR (Kar) 4511 : (1991) 4 KarLJ 275

Hon'ble Judges : S.A. Hakeem, J;B.N. Krishnan, J

Bench : Division Bench

Advocate : C.K. Kambayananda and S.P. Shankar, for the Appellant; M.H. Sowakar, for the Respondent

Judgement

B.N. Krishnan, J.—Whether the claimants who sought to recover compensation in respect of the death of the person in a motor vehicle accident and who got awards in their favour both under the Workmen's Compensation Act, 1923, and the Motor Vehicles Act, 1939, cannot exercise their option to claim compensation under either of the enactments in the appeals filed by the insurer against the respective awards is the short but interesting point that arises for consideration in these appeals.

2. To understand the circumstances under which this point has come up for consideration, only a few facts need be stated.

3. One Mohammed Hussain was employed as a driver under one Sri N. K. Dada Peer in his lorry bearing registration No. MYY-7004 and, in the course of such employment, he was driving the said lorry from Davangere to Kollegal. On April 20, 1988, when he was proceeding on National Highway No. 4, just before Hiriyur, he stopped the lorry and went to ease himself. When he was returning to get into his lorry, the lorry bearing registration No. MEG-5895 came from Chitradurga side in a rash and negligent manner and dashed against Mohd. Hussain and caused his spot death. The lorry MEG-5895 had been insured with the Oriental Insurance Company and the lorry No. MYY-7004 had been insured

with the United India Insurance Company.

4. Smt. Kadarbi and Smt. Noorjahanbi, the two wives of the said Mohd. Hussain, filed a petition against the employer and the insurer of lorry No. MYY-7004 in W. C. No. 32 of 1988 before the Commissioner for Workmen's Compensation, Davangere, for recovery of compensation. That petition was filed on May 21, 1988. The said claim was allowed by the Commissioner by his order dated December 28, 1990, awarding payment of compensation of Rs. 57,078 and interest thereon and the insurer was jointly and severally held liable to make good the compensation with the employer.

5. The very same two wives of Mohd. Hussain and their three children and his deceased mother filed M.V.C. No. 735 of 1988, on the file of the Motor Accidents Claims Tribunal II, Chitradurga, for recovery of compensation. This petition was filed on July 14, 1988, and, after contest, the Tribunal awarded compensation of Rs. 57,000 with interest thereon and made all the persons including the insurer, viz., the Oriental Insurance Company, jointly and severally liable to make good the said compensation. The insurer of lorry MYY-7004 has preferred M.F.A. No. 941 of 1991 challenging the award on the ground that the vehicle had been transferred by Dada Peer and, therefore, it was not liable to make good the compensation. The insurer of lorry MEG-5895 has challenged the award passed in MVC Case on M.F.A. No. 1641 of 1991 solely on the ground that Tribunal had no jurisdiction to investigate the claim made before it when the claimants had already exercised their option to claim compensation under the provisions of the Workmen's Compensation Act. During the proceedings before this court, the learned advocate for the claimants has filed a memo to the effect that they may be permitted to withdraw the claim made under the Workmen's Compensation Act as they are satisfied with the award passed by the Motor Accidents Claims Tribunal in the M.V. case. In M.F.A. No. 1641 of 1991, in addition to the insurer, the owner of lorry No. MEG-5895 has also joined as an appellant. The driver of lorry No. MEG- 5895 was prosecuted for having caused the accident in C.C. No. 770 of 1980 on the file of the J.M.F.C., Hiriya, and he pleaded guilty in the said case and was convicted. The driver was not examined before the Claims Tribunal to explain the circumstances under which he pleaded guilty and, therefore, rightly, the Tribunal has come to the conclusion that the accident and consequent death of Mohd. Hussain had been caused on account of the negligent driving of the said lorry, relying upon the decision of this court in Basavaiah Vs. N.S. Ashok Kumar and Another, In that view of the matter, no contention could be advanced by the appellants in the said appeal to challenge the finding relating to actionable negligence. Even in respect of the quantum of compensation awarded, no argument could be advanced because the Tribunal has appreciated the evidence and arrived at the amount awardable under the head "Loss of dependency" after correctly applying the principles enunciated by this court in the decision in H.T. Bhandary Vs. Muniyamma,

6. The main argument that was advanced on behalf of the insurer of lorry

MEG-5895 is that the claimants had the right to exercise their option to claim compensation under either of the enactments, viz., the Workmen's Compensation Act and the Motor Vehicles Act right at the threshold. Once that choice was exercised by filing a petition under the Workmen's Compensation Act, it was no longer open to them to have filed a claim petition under the Motor Vehicles Act and, as provided u/s 110AA of the said Act, the claim made before the Motor Accidents Claims Tribunal is barred had the said Tribunal had no jurisdiction to entertain the claim petition. It was, secondly, contended that the present appeals are not by the claimants and, therefore, there is no scope to hold that there is a claim pending adjudication before this court and it was, lastly, contended that the appeal is not a continuation of the claim made and, therefore, it is not open to the claimants to exercise their option to claim compensation under either of the enactments before this court. Therefore, it was urged that the appeal preferred against the award of the Accidents Claims Tribunal should be allowed. In the background of these contentions urged, the point formulated earlier has been raised.

7. It may also be noticed at this stage that only the two wives of the deceased, Mohd. Hussain, were the claimants under the Workmen's Compensation Act whereas, before the Claims Tribunal under the Motor Vehicles Act, in addition to them the mother and children of the deceased, Mohd. Hussain, are the claimants and they were not parties before the Commissioner under the Workmen's Compensation Act.

8. Before referring to the contentions urged by Sri Shankar, the learned advocate for the owner and insurer of lorry No. MEG-5895, it would be useful to notice the language of section 110AA of the Motor Vehicles Act. It reads as hereunder :

"110AA. Option regarding claims for compensation in certain cases. - Notwithstanding any thing 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 (8 of 1923), the person entitled to compensation may, without prejudice to the provisions of Chapter VIIA, claim such compensation under either of those Acts but not under both."

9. A mere look at the section would make it clear that parliament, in its wisdom, has not prescribed the time at which the person entitled to compensation should exercise his option to claim compensation under either of the two enactments. The decision of the learned single judge of the Orissa High Court in Subasini Panda and Others Vs. State of Orissa and Others, no doubt supports the contention of Sri Shankar that the choice under the said section has to be exercised at the threshold and once such choice is made by filing a petition under either of the enactments, the claimants cannot resort to the other forum under the other Act. At page [1984] ACJ282, it has been observed (60 Comp Cas 1331) :

"that once the claimants select either of the forums, they would be precluded under that sub - section from resorting to the other forum."

10. The Madhya Pradesh High Court has gone a step further in interpreting section 110AA of the Motor Vehicles Act by stating in the decision in K.K. Jain and Another Vs. Smt. Masroor Anwar and Others, as hereunder :

"The claimant can, at any stage before adjudication of the claim, exercise the choice of abandoning a claim in one forum and may prosecute it in the other. The choice so permissible to a claimant can well be exercised before the claim is adjudicated."

11. That an appeal before the High Court is a continuation of the original proceeding is a too well - settled proposition to need reference to any decided authority. Further, the mere fact that the claimants are not appellants in these two appeals by itself cannot make any difference, because the claims made by them and accepted by the Commissioner and the Tribunal are pending adjudication before this court and, therefore, the claims made by them are for consideration before this court despite the fact that the appellants are insurers of two lorries. The Supreme Court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, , has observed as hereunder :

"From the decision cited above the following principles clearly emerge :

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding."

12. While considering another facet of section 110AA of the Motor Vehicles Act, this court in Managing Director, Karnataka Power Corporation Ltd. Vs. Geetha, held :

"that mere receipt of money from any forum, without more, does not indicate any election, though that principle for election is recognized is section 110AA."

13. It has also been pointed out in this decision that the provisions of both the enactments are a piece of social welfare legislation and, while interpreting such legislations, when there is no time prescribed for exercising the choice and when, as pointed out by the Supreme Court in the decision adverted to already, the claims made before the Tribunals below and the appeal preferred before this court could be construed as one legal proceeding, it is impossible for us to accept the contention advanced by Sri Shankar that the choice of the forum has to be exercised by the claimants right at the threshold or that once a claim is made before one forum, there is no scope for the other forum to entertain the claim. We are in respectful disagreement with the proposition as laid down by the Orissa High Court in the decision referred to already. If the choice of forum could be exercised by the claimant well before the claim is adjudicated and when the claim made before the Tribunal below and the present appeal should be construed as one legal proceeding and well before adjudication of the claims by

this court, the claimants have exercised their choice to have adjudication in the motor vehicles case instituted under the provisions of the Motor Vehicles Act, ;it cannot be said that the claimants have no choice to exercise their option at this stage in these appeals. The learned advocate for the claimants invited our attention to the decision of the Gujarat High Court in Supdt. of Post Offices and Others Vs. Pratap Ghelabhai Maru and Others, with reference to the owner and insurer of the vehicle involved in the accident with which the deceased and the injured were in no way connected as the employee and against whom no claim could have been made under the provisions of the Workmen's Compensation Act. This is what has been observed at page 676 in the said decision.

"So far as the owner of the autorickshaw was concerned, the claimant had to make a choice either to claim compensation under the Workmen's Compensation Act or to claim damages under the general law. However, the question of making such election does not arise so far as a third party is concerned. The claimant could not have claimed any compensation from the appellant under the Workmen's Compensation Act. Therefore, there is no question of making any choice as urged on behalf of the appellants."

14. We are in respectful disagreement with this proposition because, in section 110AA of the Motor vehicles Act, there is no mention of the persons liable to make good the claim under either of the enactments. If that be so, the mere fact that the tortfeasor is not liable under the Workmen's Compensation Act cannot, in our considered view, make section 110AA of the Motor Vehicles Act inapplicable to the case of the tortfeasor.

15. Having regard to all there circumstances, it is clear that the claimants are perfectly at liberty to exercise their option at this stage in these appeals to give up their claims under the Workmen's Compensation Act and restrict their claim only under the Motor Vehicles Act. Hence, the point formulated is answered in favour of the claimants and against the appellants in these first appeals.

16. This finding itself is sufficient to dispose of these appeals. But, in addition, it may also be noticed that the mother and children of deceased Mohd. Hussain were not claimants before the Commissioner under the Workmen's Compensation Act and, therefore, there is no question of their having made a claim under the said Act in the first instance and, therefore, being barred from prosecuting their claims under the other forum under the Motor Vehicles Act. Again, one more undisputed fact may be noticed that despite having awards in both the cases, the claimants have not received a copper pursuant to either of the awards made in their favour.

17. In the result, the claimants are permitted to abandon their claim made under the Workmen's Compensation Act and, therefore, the award made by the Commissioner under the said Act is set aside and Miscellaneous First Appeal No. 941 of 1991 is allowed. The award made by the Accidents Claims Tribunal which is under appeal in M.F.A. No. 1641 of 1991 is confirmed and the said appeal is

dismissed. The insurer, the Oriental Insurance Company, the appellant in the said appeal, is granted four weeks" time to make the necessary deposit pursuant to the award of the Tribunal. In the circumstances of the case, the parties are directed to bear their own costs in this court.