

(2020) 11 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 9 Of 2019

United India Insurance Co. Ltd.

APPELLANT

Vs

Lakhbir Kaur And Ors

RESPONDENT

Date of Decision : 06-11-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 167, 173(1)

Citation : (2020) 11 RAJ CK 0011

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Anil Kaushik, Narendra Rajpurohit

Final Decision : Allowed

Judgement

The matter comes up on an application filed by the appellant under Order XLI Rule 27 CPC for placing on record additional evidence.

It is inter-alia indicated that qua the same accident, for which, the application for compensation was filed before the Motor Accident Claims Tribunal, Sojat, Dist. Pali ('the Tribunal'), the claimants had approached the Commissioner, Employees' Compensation, Pali, ('the Commissioner') by filing Claim Petition No.13/2013 which was decided on 15.05.2014, whereby, the claimants were paid compensation to the tune of Rs.5,00,000/-. The said aspect was not within the knowledge of the appellant - Insurance company during the pendency of the claim petition before the Tribunal and, therefore, the defence in this regard could not be taken before the Tribunal.

It is submitted that the award passed by the Commissioner has material bearing on the impugned award as under Section 167 of the Motor Vehicles Act, 1988 ('the Act'), the filing of the present claim petition is barred and, therefore, the judgment and award dated 15.05.2014 passed by the Commissioner may be taken on record by way of additional evidence.

Learned counsel appearing for the claimants, after seeking instructions, does not

oppose taking on record the award filed alongwith the application under Order XLI Rule 27.

In the circumstances of the case under provisions of Order XLI Rule 27(1)(aa) & (b) CPC, the copy of the award is taken on record.

At the request of learned counsel for the parties, the appeal itself has been finally heard.

This appeal is directed against judgment and award dated 01.08.2018 passed by the Tribunal under Section 163-A of the Act.

The petition was filed by the wife and children of one Pragat Singh inter-alia with the submissions that on 25.02.2014, Pragat Singh was driving truck No. HR 55K 5354 from Dadri to Mundra; on 25.02.2014, when he was driving on NH14, another vehicle RJ19 1G 7215 without giving any indicator was parked on the road and on account of darkness, the truck being driven by Pragat Singh collided with the said parked vehicle, resulting in, grievous injuries to Pragat Singh; he was taken to the hospital, where he succumbed to the injuries on 26.02.2013. Based on the submissions, compensation to the tune of Rs.16,50,000/- was claimed.

The application was contested by the appellant and the respondents therein and the Tribunal after hearing the parties, came to the conclusion that as the claim was under Section 163-A of the Act there was no necessity to prove the negligence of the respondent and as negligence of the deceased was not proved, the claimants were entitled to compensation and consequently awarded compensation to the tune of Rs.4,05,500/- alongwith interest.

It is submitted by learned counsel for the appellant with reference to the award passed by the Commissioner dated 15.05.2014 that the claimants had already approached the Commissioner under provisions of the Employees Compensation Act, 1923 ('EC Act'), in which, on 15.05.2014 the compensation was awarded to the tune of Rs.5,00,000/-.

The claimants after getting compensation under the EC Act, have filed the present application before the Tribunal for seeking compensation, which claim was not maintainable in view of the provisions of Section 167 of the Act and, therefore, the award impugned deserves to be set-aside.

Reliance was placed on judgment in Oriental Insurance Co. Ltd. v. Dyamavva & Ors.: MACD 2013 (SC) 70.

Learned counsel for the respondents - claimants was supplied copy of the award and was given time on 02.11.2020 to complete his instructions qua the said award and whether the amount has been received by the claimants.

Learned counsel has fairly submitted that the award indeed was passed and the amount awarded under the provisions of EC Act has been received by the claimants.

Hon'ble Supreme Court in the case of Dyamavva (supra) after taking into consideration the provisions of Section 167 of the Act, inter-alia laid down as under:-

"12. The issue to be determined by us is, whether the acceptance of the aforesaid compensation would amount to the claimants having exercised their option, to seek compensation under the Workmen's Compensation Act, 1923. The procedure under Sec.8 aforesaid (as notices above) is initiated at the behest of the employer "suo motu", and as such, in our view cannot be considered as an exercise of option by the dependants/claimants to seek compensation under the provisions of the Workmen's Compensation Act, 1923. The position would have been otherwise, if the dependants had raised a claim for compensation under Sec.10 of the Workmen's Compensation Act, 1923. In the said eventuality, certainly compensation would be paid to the dependants at the instance (and option) of the claimants. In other words, if the claimants had moved an application under Sec. 10 of the Workmen's Compensation Act, 1923, they would have been deemed to have exercised their option to seek compensation under the provisions of the Workmen's compensation Act. Suffice it to state that no such application was ever filed by the respondents - claimants herein under Sec. 10 aforesaid. In the above view of the matter, it can be stated that the respondents - claimants having never exercised their option to seek compensation under Sec. 10 of the Workmen's Compensation Act, 1923, could not be deemed to be precluded from seeking compensation under Sec. 166 of the Motor Vehicles Act, 1988.

13. Even though the aforesaid determination, concludes the issue in hand, ambiguity if at all, can also be resolved in the present case, on the basis of the admitted factual position. The first act at the behest of the respondents - claimants for seeking compensation on account of the death of Yalgurdappa B. Goudar, was by way of filing a claim petition under Sec. 166 of the Motor Vehicles Act, 1988 on 30.05.2003. The aforesaid claim petition was the first claim for compensation raised at the hands of the respondents - claimants. If the question raised by the appellant has to be determined with reference to Sec. 167 of the Motor Vehicles Act, 1988, the same is liable to be determined on the basis of the aforesaid claim application filed by the respondents - claimants on 30.05.2003. The compensation deposited by the Port Trust with the Workmen's Compensation Commissioner for payment to the respondents - claimants was much later, on 04.11.2003. The aforesaid deposit, as already notices above, was not at the behest of the respondents - claimants, but was based on a unilateral "suo motu" determination of the employer (the Port Trust) under Sec. 8 of the Workmen's Compensation Act, 1923. The first participation of Dayamavva Yalgurdappa, in the proceedings initiated by the Port Trust under the Workmen's Compensation Act, 1923, was on 20.04.2004. Having been summoned by the Workmen's Commissioner, she got her statement recorded before the Commissioner on 20.04.2004. But well before that date, she (as well as the other claimants) had already filed a claim petition under Sec. 166 of the Motor Vehicles Act, 1988, on

30.05.2003. Filing of the aforesaid claim application under Sec. 166 aforesaid, in our view constitutes her (as well as, that of the other dependants of the deceased) option, to seek compensation under the Motor Vehicles Act, 1988. The instant conclusion would yet again answer the question raised by the appellant herein, under Sec. 167 of the Motor Vehicles Act, 1988, in the same manner, as has already been determined above.

14. In the aforesaid view of the matter, we hereby affirm the determination rendered by the Motor Accidents Claims Tribunal, Bagalkot, and the High Court in awarding compensation quantified at Rs. 11,44,440/- to the claimant. The Motor Accidents Claims Tribunal, Bagalkot, as also, the High Court, ordered a deduction therefrom of a sum of Rs. 3,26,140/- (paid to the claimants under the Workmen's Compensation Act, 1923). The said deduction gives full effect to Sec. 167 of the Motor Vehicles Act, 1988, inasmuch as, it awards compensation to the respondents - claimants under the enactment based on the option first exercise, and also ensures that, the respondents - claimants are not allowed dual benefit under the two enactments."

In view of the legal position laid down by Hon'ble Supreme Court, the claimants though could have filed the application for compensation under the Act before the Tribunal, however, as the amount of compensation which was paid to them under the EC Act is already higher than what has been awarded by the Tribunal under the provisions of the Act, they are not entitled to get / retain the amount as awarded.

In view of the above discussion, the appeal filed by the appellant - Insurance Company is allowed. The award impugned passed by the Tribunal dated 01.08.2018 is set-aside.

The amount deposited by the appellant - Insurance Company under proviso to Section 173(1) of the Act be not disbursed to the claimants and the same be refunded back to the appellant - Insurance Company.

However, if the amount deposited under proviso to Section 173(1) of the Act has been disbursed, looking to the circumstances of the case, the same shall not be recovered by the appellant - insurance company, from the claimants.