

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.332 of 2008

JUDGMENT:-

This Civil Miscellaneous Appeal under Section 30 of the Workmen's Compensation Act, 1923 (presently known as Employees' Compensation Act, 1923) ('the Act', for brevity) is filed by the appellant/applicant assailing the order dated 12.02.2008 of the learned Commissioner for Workmens' Compensation and the Assistant Commissioner of Labour (FAC) of Nellore passed in W.C. Case No.MP-2/07 (IA-7/2007).

2. I have heard the submissions of the learned counsel for the appellant/applicant ('the applicant' for short) and the learned counsel for the respondents. I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:-

The applicant worked as a Cane Officer in the factory of the first opposite party. While he was on duty on 08.02.2002, he was involved in a motor vehicle accident. Immediately, he was admitted in a hospital. He had suffered amputation of the left leg above knee, on account of the injuries sustained by him in the accident. On the management reporting the mater to the Commissioner under the Act, the case was taken on file and a direction was given to the opposite parties to deposit Rs.2,80,351/-, by means of a Demand Draft, with the Commissioner for Workmen's Compensation and the Deputy Commissioner of Labour, Guntur Zone. In spite of the representations made by the applicant, the said order was not complied with by the first opposite party. The management had, however, paid Rs.1,20,000/- to the applicant, having received the same under the policy of (accident) insurance covering its employees. Nevertheless, the compensation as ordered to be deposited was not deposited and was not paid. Hence, the applicant had filed the claim application claiming a sum of Rs.4,00,000/- as compensation.

4. The said claim petition was resisted by the first opposite party; and,

during the pendency of the compensation claim case, an interlocutory application was filed by the management contending that after the involvement of the applicant in the accident, the management had admitted the applicant into the hospital and that the medical expenses were borne by it and that suppressing all the facts, including the fact that the applicant had filed an original claim petition before the Motor Accidents claims Tribunal at Ongole, the present application for compensation is once again filed and that, therefore, the application filed under the Provisions of the Workmen's Compensation Act is liable to be dismissed.

5. On merits, the learned Commissioner had allowed the said interlocutory application and had dismissed the claim case in W.C.M.P.No.2 of 2007 filed by the applicant. Aggrieved of the said orders, the applicant had preferred the instant appeal.

6. All the facts, which are narrated above, are not in dispute. The factory management had in fact admitted the employment and also the fact that the applicant had sustained injuries in a motor vehicle accident while discharging his duties and that a direction was also issued by the Commissioner concerned for deposit of Rs.2,80,351/-, but, had *inter alia* contended that the management had met the treatment expenses of the applicant and had also paid Rs.1,20,000/- which was received under the accident insurance policy covering its employees and that the present application before the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour (FAC), Nellore is not maintainable since the applicant had already filed a claim petition before the Motor Accidents Claims Tribunal at Ongole.

7. During the course of hearing before this court, the learned counsel for the applicant had fairly conceded that the Motor Accidents Claims Tribunal, Ongole, while allowing the MVOP filed by the applicant, had awarded compensation of rupees five lakhs and odd to the applicant.

8. The law is well settled that a claimant who becomes entitled to claim compensation both under the Motor Vehicles Act 1988 and under the

Workmen's Compensation Act because of a motor vehicle accident has the choice of proceeding under either of the Acts before the forum concerned. By confining the claim to the authority or the Tribunal under either of the Acts, the legislature has incorporated the concept of election of remedies, insofar as the claimant is concerned. In other words, the claimant has to elect whether to make his claim under the Motor Vehicles Act 1988 or under the Workmen's Compensation Act 1923. If the Claimant has exercised the option to seek compensation under one enactment, then he shall be precluded from seeking compensation again under another enactment. Since the applicant had already successfully pursued his remedy before the Motor Accidents Claims Tribunal at Ongole, he is precluded from seeking compensation again under the present enactment. In view of the admitted facts, the learned Commissioner is justified, in the well-considered view of this Court, in allowing the interlocutory application filed by the factory management and dismissing the claim case of the applicant.

8. Viewed thus, this Court finds that the appeal is devoid of merit and, therefore, fails. The appeal is accordingly, dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this appeal, shall stand dismissed.

M. Seetharama Murthi, J

10th July, 2015
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