

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 213 of 2016**

- Khikhram S/o Late Badri Prasad, Aged About 50 Years Caste Kashyap, R/o. Pendry, P. S. And Tahsil Janjgir, District Janjgir Champa (Chhattisgarh)

---- **Petitioner****Versus**

1. Raj Kumar @ Kanshiram S/o Tumnath, Aged About 50 Years By Caste Kashyap, R/o. Pendry, P. S. And Tahsil Janjgir, District Janjgir Champa (Chhattisgarh)
2. Smt. Sumitra Bai W/o Raj Kumar, Aged About 45 Years By Caste Kashyap, R/o. Pendry, P. S. And Tahsil Janjgir, District Janjgir Champa (Chhattisgarh)

---- **Respondent**

For Petitioner:
For Respondents

Mr. P. Dhurandhar, Advocate
Mr. Ravindra Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****03.02.2017**

1. The present Writ Petition under Article 226/227 of the Constitution of India has been filed assailing the order dated 31.08.2016 passed by the Commissioner, Employee's Compensation, Labour Court Janjgir-Champa in Case No. 05-ECA/COC-1 B/16-F Claim. Vide the impugned order dated 31.08.2016 learned Commissioner has rejected the preliminary objection filed by the present Petitioner in respect of the maintainability of the claim.
2. The brief facts relevant for the adjudication of the instant case is that the Respondents in the present case are the mother and father of the

deceased Lalu @ Gajendra Kashyap who met with an accidental death on 07.12.2011 when he was working as driver under the present Petitioner. The Respondents initially filed claim case before the Motor Accident Claims Tribunal, Janjgir – Champa which was registered as MACC No. 22/2012. The said case finally got rejected on 30.08.2014 on the ground that the claimants are not entitled for any compensation on account of the fact that the accident arose because of negligence on part of the deceased himself as it was established before the Tribunal that the deceased was driving the tractor in a rash and negligent manner, thus disentitling the claimants for the compensation. Subsequently, Respondent claimants filed a claim petition under Section 163 (A) of the Motor Vehicle Act before the same Tribunal on 19.11.2014. Meanwhile the Respondents also filed a claim Petition before the Commissioner, Employee's Compensation at Labour Court, Janjgir – Champa. Subsequent to the Registration of the said claim case before the Labour Court under the Employee's Compensation Act, the Claim case filed under Section 163(A) before the Motor Accident Claims Tribunal, Janjgir-Champa was withdrawn by the Respondents on 11.1.2016. The fact that the Respondent had filed a claim case under Section 166 and as also under 167(A) was not disclosed before the Commissioner, Employee's Compensation Act.

3. The Petitioner respondent on receipt of notice from the Labour Court, filed an objection that subsequent application under Employee's Compensation Act was not maintainable since the applicants had already filed their claim application under the Motor Vehicle Act where the application has been rejected on merits by the Tribunal disentitling

them for any compensation because the accident occurred due to the negligence on part the deceased himself. It is this application which has been rejected by the Court below, vide the impugned order holding that the claim application under the Employee's Compensation Act was maintainable inspite of rejection of the Claim application under the Motor Vehicle Act.

4. Learned Counsel for the Petitioner submits that the case before the Court below was not maintainable on account of the fact that the Respondents had already filed an application seeking claim under Section 166 of the Motor Vehicle Act before the Motor Accident Claims Tribunal, Janjgir – Champa where the claim istood rejected on its merits. Therefore, the subsequent claim petition before a different forum under a different provision of law is not tenable.
5. According to the Petitioner the Tribunal in the instant case has not properly considered the provision of law in as much as the Respondents having already filed their claim petition before their chosen forum and having opted so the Motor Accident Claims Tribunal for claiming compensation, subsequently on their failure to get the compensation before the said forum now they cannot choose another forum under the Employee's Compensation Act. He further submits that it is a case where the Rule of Estoppel and the Doctrine of Election would come into play in as much as once when under the Doctrine of Election the Respondent Claimants have opted for claiming compensation under the Motor Vehicle Act and having failed to get a relief where the claim application has been dismissed on merits and the said order having not been challenged further the said

finding has attained finality. Therefore the claim application before the Commissioner under the Employee's Compensation Act would not be maintainable. The Principle of Rule of Estoppel would apply upon the Respondent and thus the Court below was not justified in rejecting the preliminary objection raised by the Petitioner before the Court below.

6. Shri Ravindra Sharma, Counsel appearing for the Respondents on the other hand opposes the Petition on the ground that just because the claimants' claim application under the provisions of Motor Vehicle Act got rejected, by itself, would not disentitle them from seeking compensation under the Employee's Compensation Act. According to Shri Sharma the case of the claimants was that the deceased was an employee of the Petitioner ie. there were an employee employer relationship. Further the fact that the deceased had died an accidental death is not in dispute. Now that in any case it is established before the Court below that "the Accident arose in the course of his employment and out of the employment" then the claimant would be entitled for the compensation under the Employee's Compensation Act. Thus the Court below was justified in rejecting the preliminary objection of the Petitioner.
7. Having heard the rival contentions put forth on either side what is undisputed in the instant case is that the accident did occur on 7.12.11 arising out of the use of the tractor belonging to the present Petitioner. The vehicle involved in the accident was not insured. The Respondents are the mother and father of the deceased. They had filed claim case under Section 166 of the Motor Vehicle Act before the Motor Accident Claims Tribunal, Janjgir-Champa. The case has got

rejected vide the order dated 30.08.2014 holding that the claimants are not entitled for any compensation under the Motor Vehicle Act as according to the Tribunal the accident arose because of the rash and negligence driving on the part of the deceased himself. The claimants had also moved an application under Section 163(A) of the Motor Vehicle Act which was later withdrawn. Meanwhile, before the application under Section 163(A) was withdrawn the Respondents approached the Labour Court under the provisions of Employees Compensation Act seeking for compensation. The Labour Court entertained the application, registered the case and issued notice to the Petitioner Respondent. Meanwhile the proceeding under Section 163(A) before the Motor Accident Claims Tribunal was withdrawn by the Respondents. Now preliminary objection was raised in respect of the maintainability of the case before the Labour Court in the light of the rejection of the claim application by the Motor Accidents Claims Tribunal on its merits disentitling them for compensation. This application has been rejected holding that the claim case is maintainable before the Commissioner Employees Compensation Act.

8. At this juncture it would be relevant to refer the provisions of the Employee's Compensation Act which under Section 3 deals with the employer's liability of compensation :-

“3. Employer's liability for compensation :- (1) If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:”

9. A plain reading of the aforesaid provision of the Act clearly reflects that

the ingredients for claiming compensation under the Employee's Compensation Act was arising of an accident resulting in personal injury / death, the accident arising out of employment and also arisen during the course of employment, in case these ingredients are met the entitlement for claim of the compensation is made out. Whereas under the provisions of the Motor Vehicle Act the Tribunal are casted with the responsibility to ascertain the actionable negligence by owner or driver of the vehicle causing injury or death of a person so as to decide the liability of the compensation. It is also not in dispute that the accident occurred due to actionable act on part of the deceased himself being a driver no claim could be entertained by the Claims Tribunal by his legal representatives under such circumstances. However, in case the Motor Accidents Claims Tribunal has rejected the claim application of the claimants on the ground that the accident occurred due to actionable negligence on the part of the deceased himself would not preclude the Claimants from claiming compensation under the Employee's Compensation Act. In case an application has been moved by the claimant under the Employee's Compensation Act after rejection of the claim application by the Motor Accident Claims Tribunal it would not be hit by the rule of Estoppel nor would it come under the ambit of the Doctrine of Election.

10. The said stand gets fortified from the decisions of the Karnataka High Court in case of **B. Prabhakar and Another vs. Smt. Bachima** reported in **AIR 1984 Karnataka 225** where the Court has held that in case of the case under the Motor Vehicle Act would not be accepted the claim made by the claimants before the Commissioner for

Workmen's Compensation Act would however be maintainable.

11. Similar view has also further been taken by the Bombay High Court in the case of **Neelabai Mahadeo Salunke And Others vs. Shamrao Tatoba Pawar And Ors.** Reported in **1995 (1) ACC 184** where the High Court of Bomday has in paragraph 9 and 10 held as under :

“9. The learned Commissioner for Workmen's Compensation held that the party had a choice to make a claim before either of the two forums and once the claim was before the Motor Accident Claims Tribunal, no claim could be made for compensation in respect of the same accident invoking Workmen's Compensation Act, 1923. The proposition formulated by trial Court is too wide and is incorrect. In my opinion, the learned Commissioner for Workmen's Compensation was clearly in error. In the first instance it is required to be decided as to whether the death or bodily injury in question gave rise to a claim for compensation under Motor Vehicles Act, 1939 as well as a claim under the Workmen's Compensation Act, 1923. The dependents of the deceased may not be aware about the cause for the death of the deceased and may not be able to prove that the deceased had died as a result of an accident which occurred due to actionable negligence of the owner or the driver concerned. In such a situation it shall have to be held that the remedy of filing a claim for compensation under Section 110A of the Motor Vehicles Act, 1939 was misconceived

by the dependents of the deceased and the applicants could not lawfully make a claim for compensation under Section 110A of the Act. In such a case, neither Section 110A of the Act is attracted nor Section 110A can be invoked.

10. In the result the appeal is allowed. The finding recorded by the Commissioner for Workmen's Compensation to the effect that the application made by the claimants under Workmen's Compensation Act, 1923 was not maintainable in law and is set aside.”

12. The similar view has also been taken by the Division Bench of the Kerala High Court in case of **New Indian Assurance Co. Ltd. v. Pennama Kurien and Ors.** Reported in **1995 (II) LLJ 28**. Vide the said judgment while dealing with a similar situation the High Court of Kerala in paragraph 7, 8 and 10 has held as under:

“7. But if the person who filed the application under one Act is nonsuited on any ground, can it be held that he too would be debarred from filing the application under the other Act ? Dismissal of the application filed under one statute must be taken as the consequence of a finding that he has no valid claim to be made under that Act. If no valid claim can be made, its corollary is that it was not a claim recognisable under law. If so, there is no bar to making a claim under the other statute.

8. The said principle can be discerned from the words employed in Section 110AA 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.

9....

10. But the position would be different under the Workmen's Compensation Act in the case of death of the driver concerned. The employer is liable to pay compensation to his workman when he sustains personal injury by accident which arose out of and in the course of his employment. Section 3 of the Workmen's Compensation Act created the liability in that domain. Of course, the conduct of the workman in relation to that accident may affect his entitlement to compensation in certain contingencies mentioned in the proviso to Section 3. But the liability of the employer would remain unimpaired if the injured workman has

succumbed to such personal injuries. Thus, under the Workmen's Compensation Act when death is caused to the workman in such contingencies his legal heirs would become entitled to compensation whether or not the accident is attributable to the negligence of the workman concerned.”

13. In view of the aforesaid principle of law laid down by the various High Courts when the facts of the present case is compared it would reveal that the situation in the present case is also identical in nature. The rejection of the claim of the Respondents by the Motor Accident Claims Tribunal was for the reason that the accident arose on account of the negligence of the deceased himself which could be a valid ground for rejection of the claim application under the provision of the Motor Vehicles Act. The same cannot be a ground for disentitling dependents of a worker who had died in an accident under the provisions of the Employee's Compensation Act where the negligence part is not the consideration for the granting compensation. So far as the claim under the Employee's Compensation Act is concerned it is only contingency or the ingredients mentioned under Section 3(1) which are relevant for deciding claim under Employee's Compensation Act and as regards disentanglement under the Employee's Compensation Act is concerned the same would only be applicable in a situation where the case falls under the provisions of Section 3(1) of the Employee's Compensation Act. Thus the factor of disentanglement can be decided only after the evidences are recorded on either side particularly the employer who would have to bring the case within the ambit of the provisions of Section 3(1) of the Employee's Compensation Act so as to disentitle

the claim of the Respondents.

14. In view of the same this Court does not find any good ground for entertaining the present Petition nor does it find any illegality or infirmity in the order passed by the Labour Court.

15. Thus, the Petition being devoid of merits, the same deserves to be and is accordingly rejected.

16. No order as to costs.

Sd/-

(P. Sam Koshy)
JUDGE