

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.2225 of 2011

The New India Insurance Company Limited, Through its Divisional Manager, The New India Insurance Co. Ltd., IInd Floor Rama Trade Center, Opposite Rajeev Plaza, Bilaspur (C.G.)

---- Petitioner

Versus

1. Smt. Sushila @ Draupati Dewangan, Wd/o Ramesh Dewangan, aged about 22 years,
2. Umesh Kumar, S/o Late Ramesh Dewangan, aged about 3 months, being minor represented mother respondent No.1 Smt. Sushila @ Draupati Dewangan,

Both R/o Charama, P.S. Charama (Thanapara), Tahsil Charama, District Kanker (C.G.)

(Claimants)

3. Shivram, S/o Banshilal Sukhdev, Caste Mahar, R/o Village Dargahan, Tahsil Charama, District Kanker (C.G.)

(Owner)

---- Respondents

For Petitioner: Mr. Sourabh Sharma and Mr. Tarkeshwar Nande,
Advocates.

For Respondent No.3: -
Mr. Jitendra Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/10/2018

1. Shri Ramesh Dewangan died in a motor accident. His mother Smt. Uma Dewangan filed Motor Accident Claim Case No.11/2008 (Smt. Uma Dewangan v. Shivram and another) before the Additional Motor Accidents Claims Tribunal, Kanker, claiming her son to be unmarried, which was adjudicated and compensation to the extent of ₹ 1,67,900/- was granted to her along with interest. Thereafter, widow of Late Ramesh Dewangan filed an application under Section 10 of the Employees' Compensation Act, 1923 (for short, 'the Act of 1923')

before the Commissioner for Employees' Compensation, claiming compensation in which the Insurance Company – the petitioner herein raised objection that in view of Section 10 of the Act of 1923, the application is not maintainable. The said objection was rejected by the Commissioner for Employees' Compensation against which this writ petition has been preferred.

2. I have heard learned counsel for the parties.
3. Under Section 167 of the Motor Vehicles Act, 1988, the claimant has option either to move application for compensation before the Commissioner for Employees' Compensation under the Act of 1923 or before the Motor Accidents Claims Tribunal, but he/she cannot proceed under both the Acts, as the claimant is left free to prefer either of the two forums.
4. The Supreme Court in the matter of **Oriental Insurance Company Limited v. Dyamavva and others**¹ has considered the scope of Section 167 of the Motor Vehicles Act, 1988 and held as under: -

“16. 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.

17. The procedure under [Section 8](#) aforesaid (as noticed 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 [Section 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 [Section 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

¹ (2013) 9 SCC 406

Compensation Act. Suffice it to state that no such application was ever filed by the respondent claimants herein under [Section 10](#) aforesaid. In the above view of the matter, it can be stated that the respondent claimants having never exercised their option to seek compensation under [Section 10](#) of the Workmen's [Compensation Act](#), 1923, could not be deemed to be precluded from seeking compensation under [Section 166](#) of the Motor Vehicles Act, 1988."

5. Reverting to the facts of the present case, the claimant in this case i.e. widow of Late Ramesh Dewangan has not exercised the option to seek compensation under Section 166 of the Motor Vehicles Act, as option to claim compensation has been exercised by the mother of the deceased, therefore, the application of the widow of the deceased under Section 10 of the Act of 1923 cannot be held to be barred under Section 167 of the Motor Vehicles Act, 1988. However, since compensation has already been awarded to the mother of Late Ramesh Dewangan, the Insurance Company is at liberty to proceed in accordance with law before the Commissioner for Employees' Compensation without being prejudiced by the earlier order and if appropriate application is filed by the Insurance Company, that will be considered by the Claims Tribunal without being prejudiced by the impugned order and this order.
6. With the aforesaid observation, the writ petition stands finally disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge