

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.M.A.No.391 of 2009

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the United India Assurance Company Limited questioning the order dated 27.01.2009 in W.C.No.24 of 2007 passed by the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Tirupati.

The case before the Commissioner was filed by the driver of the lorry bearing No.AP26-U-3276 belonging to the first opposite party (OP-1). While he was driving the said lorry on 12.12.2000, he met with an accident caused by another lorry bearing No.TN-04/8173, which dashed against the applicant's lorry. Stating that he has sustained grievous injuries, this claim petition was filed for compensation of Rs.4,00,000/-.

OP-1 did not appear and contest the case. OP-2 filed a counter strongly denying the case set up by the applicant. They also raised a plea that the applicant had already filed a Motor Vehicle Original Petition (MVOP) on the file of the VI Additional District Judge, Tirupati. Therefore, the contention of the insurance company is that the present application is barred under Section 167 of the Motor Vehicles Act.

For the applicant, two witnesses were examined as AWs.1 & 2 and Exs.A.1 to A.8 were marked. For the opposite parties, no oral or documentary evidence was introduced. Ultimately, the Commissioner came to a conclusion that the

applicant is entitled to the compensation and awarded a sum of Rs.4,83,984/-. OP-1 & OP-2 were jointly and severally directed to pay the same. It is this order that is now assailed in the present appeal by OP-2/United India Assurance Company Limited.

This Court has heard Sri Naresh Byarapaneni, learned counsel for the appellant/insurance company and Sri A. Chandraiah Naidu, learned counsel for the first respondent/applicant.

During the course of arguments, the learned counsel for the appellant essentially concentrated on Section 167 of the Motor Vehicles Act and argued that as the applicant had admittedly exercised the option of filing of an application before the MACT, he is precluded from claiming any compensation under the present application.

The learned counsel for the first respondent on the other hand argues that MVOP was dismissed as it was wrongly filed; that the applicant did not receive any compensation whatsoever for the injury and that therefore, the present application is sustainable and maintainable.

This Court notices that the point that essentially arises for consideration in this case is about Section 167 of M.V. Act and its impact. Section 167 of M.V. Act is to the following effect:

“Option regarding claims for compensation in certain cases — Notwithstanding anything 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, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."

The argument of the learned counsel for the first respondent/applicant therefore is that once the option is exercised by the applicant to approach the MACT, he cannot thereafter file an application under the Workmen's Compensation Act. The learned counsel argues that the applicant cannot go forum shopping and that once an application is filed under the Motor Vehicles Act, he cannot be allowed to file an application under the Workmen's Compensation Act. According to the learned counsel, the words in Section 167 are crystal clear and the applicant can claim compensation under one of the two Acts but not under both. The learned counsel argues that awarding of compensation is immaterial. According to him, the filing of an application under one Act precludes the filing of another application under the second Act.

In reply thereto, the learned counsel for the respondent /applicant argues that the mere filing of an application before the MACT does not lead to a conclusion that the second application is barred. According to him, it is only if the compensation is awarded under one Act, that the party is prevented from claiming compensation under the other Act. The learned counsel relied upon a decision in **S. Lalitha v.**

Zakir Hussain¹. The facts in this case disclose that the mother of the application filed an application before the MACT and secured compensation of Rs.50,000/- under no fault liability for the death of her son. The wife of the worker later filed a case before the Commissioner for Workmen's Compensation, Hyderabad-II. The Commissioner dismissed the application on the ground that the mother had already filed an application under the Motor Vehicles Act. A learned single Judge of this Court after considering the legal and factual submissions came to the following conclusion and remanded the matter:

“Award of amount by the Motor Accidents Claims Tribunal to the mother of the deceased who is R-3 herein a certain amount under no fault liability does not takeaway the jurisdiction of the authority under W.C. Act to consider the claim of the wife of the deceased and award just compensation. But it is only just and appropriate that the amount received under no fault liability is given credit while fixing the amount of compensation payable under W.C. Act since the compensation is in respect of the same accident.”

(emphasis supplied)

The learned counsel for the first respondent/applicant also relied upon a judgment of the Bombay High Court in ***the New India Assurance Company Limited v. Mrs. Bharati Adhik Patil***, vide First Appeal No.1342 of 2014 with CAF/1487/2814 and points out that after a review of the entire case on the subject, the learned single Judge held as follows:

26. The claim was taken as a claim under Section 163-A of the Motor Vehicles Act and the Tribunal dismissed the claim on two grounds i.e., the

¹ 2004 ACC 628

deceased was driving in a rash and negligent manner and, therefore, as he was rash and negligent, the claim cannot be granted under 163-A and also he was having a salary of more than Rs.40,000/- and so the compensation cannot be given

27. Therefore, if the claim, application is rejected on certain technicalities before one forum, then, denying other forum will lead to depriving dependents of the compensation for which they are otherwise entitled to.”

Another single Judge of this Court in ***United India Insurance Co. Ltd., Armoor Branch, Nizamabad Dist. v. Kore Laxmi***² held in para-30 and 31 as follows:

30. In the facts and circumstances of the present case, I am of the opinion that the claimants have mistakenly moved the Claims Tribunal under the MV Act. It does not mean that the claimants have elected a forum. In the facts and circumstances of the case, even though the claimants/ respondents filed claim petition before the Claims Tribunal under the MV Act, it does not bar them from making a claim before the Commissioner under the WC Act. The claimants are at liberty to file claim petition before the Commissioner for Workmen's Compensation once again to seek redressal of their claim.

31. On 15-11-1999, this Court passed an interim order staying the operation of the order dated 23-6-1998, passed by the Claims Tribunal, subject to the condition of the Insurance Company depositing half of the decretal amount and costs in the lower Court. Pursuant to the said interim order, the Insurance Company deposited the amount in the lower Court. Having regard to the amount deposited by the Insurance Company, this Court again on 16-9-1999, passed an order making the interim stay absolute and permitted the claimants to withdraw the amount deposited by the Insurance Company. Having regard to the fact that this Court has held that the remedy of the claimants is to move the Commissioner under the WC Act, for compensation, I direct that the amount, if any, withdrawn by the claimants, pursuant to the above order, shall be

² 2003 ACJ 203

adjusted in the compensation that may be determined by the Commissioner under the WC Act.”

It is clear that the purpose of the Motor Vehicles Act and or the Workmen’s Compensation Act is to see that a person who sustained some injury in an accident gets compensation for the said injury. However the liability under the Motor Vehicles Act is a tortuous liability, whereas the liability under Workmen’s Compensation Act is a statutory liability. Under both the Acts; the ultimate purpose/object is to see that the compensation is paid for an injury/death etc.

As first blush, Section 167 of M.V. Act also appears to suggest that the filing of an application under one Act precludes the filing of another application under the second enactment, but a careful reading of the language used and the decided case law that is cited leads to the conclusion that what is prohibited is the prosecution of a case for compensation under the Workmen’s Compensation Act and the Motor Vehicles Act if compensation is awarded by one or the other tribunal. The Section merely says that a person entitled to compensation may claim compensation under either of the two Acts, but not under both. Therefore, a reading of the section makes it clear that a person cannot claim compensation for one accident under two enactments. This is also in consonance to the general law of the land by which the person cannot be compensated twice for the same cause of action. In both the **S. Lalitha** and in **Kore Laxmi’s** cases, the compensation awarded earlier was directed to be

adjusted in the compensation payable under the Workmen's Compensation Act.

It is also not difficult to visualize a situation like in the present case where a case for compensation is dismissed for want of jurisdiction or other similar technical grounds. In such a situation, can it be said that the party is totally precluded from claiming compensation under the second Act?

The present appeal is a classic example for this scenario. Ex.A.6 is a certified copy of the order passed in MVOP No.8 of 2002. Based on ill-advice, the present applicant filed a case against the lorry bearing No.TN-04/8173 that caused the accident. This lorry bearing No.TN-04/8173 hit the lorry bearing No.AP26-U-3276 on which the applicant was working. The lorry bearing No.AP26-U-3276 belongs to the first respondent (OP-1)/Sri Krishna Lorry Services. However, MVOP No.8 of 2002 is filed against the first respondent and the lorry bearing No.TN-04/8173. The MACT-cum-VI Additional District Judge rightly dismissed the MVOP holding that no award can be passed against Sri Krishna Lorry Services in MVOP No.8 of 2002 as they are not the owners of lorry bearing No.TN-04/8173. Thus, the applicant was deprived of compensation under the said Act. Therefore, it is clear that the applicant could not secure any compensation for injuries sustained. It is also clear that the injured workman prosecuted/filed a case against the wrong party.

In the circumstances of the present case, the applicant did not secure any compensation whatsoever and as the application was dismissed due to a clear error in the pleading, this Court is of the opinion that the applicant cannot be deprived of his compensation. Therefore, this Court holds that the dismissal of MVOP No.8 of 2002, vide Ex.A.6-order does not preclude the application from claiming the compensation.

This Court also notices that the compensation that is ultimately awarded in this case is justified in the facts and circumstances of the case. There is no serious dispute about the age and wages of the applicant. The Doctor who examined the applicant gave Ex.A.8-certificate. The Doctor clearly deposed that the applicant cannot drive the vehicle as before. The Commissioner on an appreciation of the evidence and after relying upon the case law came to a conclusion that while the physical disability is 50%, the loss of earning capacity is actually 100%. Therefore, the Commissioner awarded the compensation as claimed. This is in line with the settled law commencing from ***Pratap Narain Singh Deo v. Srinivas Sabata***³.

This Court on an examination of the facts and law on this subject concurs with the finding of the lower Court. Therefore, this court concludes that there are no merits in the appeal.

³ AIR 1976 SC 222

Accordingly, the Civil Miscellaneous Appeal is dismissed. The order dated 27.01.2009 in W.C.No.24 of 2007 passed by the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Tirupati is confirmed.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 02.07.2018
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