

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.522 OF 2002

Narayan s/o. Chokhoba Waghbhiye,
Age 35 years, Occu. Driver,
R/o. Deokara, Taluka Ahmedpur,
District Latur

.. Appellant
(Original Applicant)

Versus

1. Mrs. Sangita w/o. Chandrakant Gharat,
Age 35 years, Occu. Business,
R/o. Dongri, Post Bokadveera,
Taluka Uran, District Raigad
2. The New India Assurance Company Ltd.,
Panvel Branch, Panchayat Building,
1st Floor, M.G. Road, Panvel,
District Raigad.

.. Respondents

...

Mr. B. R. Kedar, Advocate for Appellant
Mr. S. G. Chapalgaonkar, Advocate for Respondent no.2

...

CORAM : S. G. MEHARE, J.

DATE : 06-06-2022

PER COURT :-

1. The appellant takes exception to the order passed by the learned Commissioner for Workmen's Compensation and Judge Labour Court at Latur in Application (WCA) No. 4 of 98 dated 30.07.2001.

2. The facts giving rise to the Appeal were that the appellant was a driver with respondent no.1. Respondent No. 1 owned a truck bearing no. Mh-04-C-6933 and was insured with respondent no.2. He met with a vehicular accident on 13.04.1997. He sustained the injury to his femur and toe of the left leg. He was hospitalised for around twenty days. He sustained 35% physical disability. He was employed with respondent no.2 on the day of the accident. He could not work as before the accident. He served the notices to both respondents. However, none of the respondents has paid him the compensation. Hence, he filed an application under Section 3 and 22 of the Workmen's Compensation Act 1923 (now Employees Compensation Act 1923) ("1923 Act", for short).

3. The learned Commissioner rejected his Claim for the reason that the appellant had already approached the Motor Accident Claims Tribunal and had received the compensation under section 140 of the Motor Vehicles Act 1988; ("M.V.Act", for short) therefore, the Claim is barred under section 167 of the M.V. Act. Hence, this appeal.

4. The respondents have neither denied the accident nor the relationship with the appellant. Respondent no.2/insurer objected that the application is bad for no notice under section 10 of the

1923 Act. However, the learned Commissioner has discarded the said objection and no appeal or cross-appeal is preferred against the said finding. It has also objected that the application is hit by section 167 of the M.V. Act.

5. Heard the learned counsel Shri. B.R. Kedar for the appellant and the learned Counsel Shri S.G. Chapalgaonkar for respondent no.2 at length. None appeared for respondent no.1.

6. Learned counsel for appellant Shri. Kedar would argue that the learned Commissioner has misread and misinterpreted section 167 of the M.V. Act. An application under Section 140 of M.V. Act has been excepted from the bar envisaged in Section 169 of M.V. Act and an application for compensation either under the Workmen's Compensation Act or M.V. Act, is maintainable. He would rely on the case of ***Maroti Shrawan Manghate vs Smt. Rita Y. Sapra and Anr. [2018 (1) All MR. 700]***.

7. Per contra, learned counsel Shri. Chapalgaonkar for respondent no.2 would argue that after the impugned order, the appellant had filed another application under section 166 of M.V. Act. The appellant had made the incorrect statement before this court that the said application had been withdrawn. However, the copy of the order passed in the said application reveals that the said application was dismissed for default. The appellant was

exercising the remedies simultaneously by suppressing the material facts from the court. If the said application had been withdrawn, the situation would be different. But the said application was dismissed for default. Therefore, the application cannot be considered. There is no substance in the appeal. If the court concludes that the appeal deserved to be allowed, the matter should be remitted to the learned Commissioner, as the application has been decided without answering all the issues framed.

8. A short point that arises for consideration is, Whether the compensation granted under chapter X of the M.V. act forfeits the right of the employee to claim the compensation under section 3 of the 1923 Act as provided under Section 167 of the M.V. Act ?

9. Before advertng to the issue involved in the appeal, it would rather be appropriate to reproduce Section 167 of the M.V.Act, which reads thus;

*“167. Option regarding claims for compensation in certain cases.
— Notwithstanding anything contained in the Workmen’s Compensation Act. 1923 (8 of 1923) where the death 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.”*

10. The bare reading of the section reveals that the option as envisaged in section 167 of the M.V. Act is available only to the employees covered under the 1923 Act. It provides two forums. The option lies with an employee claiming compensation either under the 1923 Act or M. V. Act. But, employee cannot claim the compensation under both the Acts. However, chapter X of the M.V. Act is excepted from the bar envisaged in Section 169 of M.V. Act.

11. Chapter X of the M.V. Act deals with liability without fault in certain cases. Said chapter contains Sections 140 to 144. Section 140 speaks of the liability to pay compensation in certain cases i.e death and permanent disablement, on the principle of no fault. Under this section, the person who died or sustained permanent disablement is entitled to compensation. Section 141 speaks of the other right to claim compensation for death or permanent disablement. It has been provided in the said section that the compensation under this chapter is in addition to the right to claim compensation under the principle of fault except the right to claim under section 163-A of the M.V.Act. Section 142 defines permanent disablement. Section 143 speaks of the application of this chapter to certain claims under Act 8 of 1923, and Section 144 speaks of the overriding effect of the provisions of this chapter. As against this, Section 167 of the M.V. Act falls under chapter XII. The said chapter includes the provisions for the

constitution of the Claims Tribunal, application for compensation under section 166 under the principle of fault, the option of the forum to the employees covered under 1923 Act, awards of the Claim Tribunal, procedure and powers of the Claim Tribunal, impleading insurer in certain cases, award of interest, award of compensatory costs in certain cases, appeals, recovery of money from the insurer, and the powers of the State government to make rules.

12. Application of chapter X as envisaged in section 143 and exception of the applicability of this chapter as envisaged in section 167 should be read together to answer the point that has arisen for consideration. Section 143 is very specific that the provisions of chapter X of the M.V. Act shall apply to any claim for compensation in respect of the death or permanent disablement to any person under the 1923 Act resulting from an accident of the nature involved in sub-section (1) of Section 140 and for the said purpose the said provisions shall, with necessary modifications have been deemed to form the part of that Act. The provisions of the Sections are unambiguous, that where the death or permanent disablement is caused to an employee in a vehicular motor accident, he is entitled to the compensation under the principle of no fault liability in addition to the compensation under the principle of fault liability.

13. Section 167 barely provides for the choice of the forum to the employee. Section 3 of the 1923 Act pertains to the employer's liability to pay compensation. The object of these two acts is to pay the compensation to an employee if he loses his life or suffers permanent, partial or permanent total disablement sustained in a vehicular motor accident. The compensation for vehicular motor accidents is covered under the M.V. Act. It also covers the compensation for the driver of the vehicle involved in the accident. However, in case the driver of such a vehicle is an employee of the owner of the vehicle. In such a case, the law has given him an option to seek compensation either under the M.V. Act or Employee's Compensation Act, 1923. Once the employee exercises an option under either of the law, he can not opt for the other forum after either forum passes the award.

14. The words in section 167 of M.V.Act, "*Without prejudice to the provisions of Chapter X*", are self speaking to interpret the said section that an application decided by the Claims Tribunal under section 140 of the said Act, does not bar the employee from availing remedy for compensation under the 1923 Act on the principles envisaged in the said Act. Reading section 167 would reveal that chapter X of the M.V. Act has no application while opting for the forum to claim the compensation. In other words, the reliefs granted under chapter X of the M.V. Act would not come

in the way of claiming compensation before the Commissioner of Employee's Compensation or the Claims Tribunal.

15. The Bombay High Court at Nagpur Bench, in the case of **Maroti** (*supra*), had an occasion to deal with the similar issue. Interpreting section 167 of the M.V. Act, it has been observed in the said case that Section 167 of the M.V. Act gives the option only to proceed either under M.V. Act or W.C. Act. But it has no application to Chapter X. The right to claim compensation under W.C. Act is not forfeited upon receiving compensation on no fault principle.

16. By discussing the facts and law, this court concludes that Where the employee receives compensation under Chapter X of the M.V. Act, his remedy to seek compensation either under the 1923 Act or the M.V. Act cannot be forfeited under section 167. Such an employee has an option to move an application for compensation either under the 1923 Act or M.V. Act. Accordingly, the question that arisen for consideration is answered.

17. So far as the objection that the application filed under section 166 of the M.V. Act is concerned, this court is of the view that once the Commissioner passes an award under the Employee's Compensation Act 1923, no such application would lie before the Claims Tribunal. Otherwise, that application also did not

affect the remedy availed by the appellant before the Commissioner.

18. The learned counsel Shri Chapalgaonkar has correctly pointed out that the learned Commissioner did not record the findings on all issues on merit. Therefore it would be inappropriate to determine the compensation here.

19. For the aforesaid reasons, this court is of the opinion that the learned Commissioner has misread and misinterpreted Section 167 of the M.V. Act and erroneously dismissed the application of the appellant. Therefore the appeal is allowed, and the impugned order is quashed and set aside.

20. Since all the issues have not been answered on merit, the matter is remitted to the Commissioner of Employee's Compensation at Latur for determination of the compensation afresh within six months from the receipt of this order.

21. Records and papers are sent back to the Commissioner of Employee's Compensation office at Latur.

22. No orders as to costs.

(S. G. MEHARE)
JUDGE