

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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RSA No. 1794 of 2022 (O & M)

Date of decision : 17.11.2022

United India Insurance Company Limited, ChandigarhAppellant

Vs.

Dalipa and others Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Paul S. Saini, Advocate and
Ms. Kamaljit Kaur, Advocate, for the appellant

Mr. Sushil Bhardwaj, Advocate, for respondents no.2 to 6

None for respondents no. 8 and 9

TRIBHUVAN DAHIYA, J. (Oral)

CM No. 6051-C of 2022:

This is an application for condonation of 8 days delay in filing the instant appeal.

Notice of the application was issued on 1.9.2022. But no reply has been filed to the application to date.

For the reasons mentioned in the application, the same is allowed.

Delay of 8 days in filing the instant appeal is condoned.

RSA No. 1794 of 2022 (O & M):

1. As per office report, respondent no.7 remained unserved, the appeal, however, is being decided since no order adverse to its interest is being passed.
2. This is defendant's/Insurance company's second appeal against the

concurrent findings of both the Courts below.

3. The facts of the case in brief are, respondents no.1 to 6/plaintiffs (hereinafter referred to as 'the plaintiffs') filed a suit for recovery of compensation on account of unnatural death of Shri Bhagwan. The plaintiffs are his parents, widow and minor children. On 11.11.2016, the deceased, Kuldeep and Sunhera were working as labourers on an electric line in the area of village Mund under the contractor/respondent no. 7 (defendant no.1 in the civil suit, hereinafter referred to as 'the contractor'). While they were working on the electric line, it suddenly turned live and the deceased fell down due to jerk of electric current. He was immediately removed to Government Hospital, Kaithal, however, was declared brought dead. A criminal case bearing FIR No.735 dated 12.11.2016 was registered under Section 304-A IPC in Police Station Assandh, against the contractor. In post-mortem report of the deceased dated 12.11.2016, the doctor opined the cause of death was due to electrocution. The contractor was insured by the appellant/defendant no.4 (hereinafter referred to as the 'Insurance company').

4. The suit was contested by the contractor, the Department as well as the Insurance company denying their liability to pay any compensation. The Insurance company pleaded, as the deceased was working under the contractor and died during his employment with the latter, the Civil Court had no jurisdiction to try and decide the suit. It was also pleaded that averments of the plaint made it apparent that the accident took place due to rash and negligent act of other defendants. Therefore, the claim was not maintainable against the Insurance company.

5. On the pleadings of the parties, the following issues were settled by the trial Court:

1. Whether the plaintiff is entitled for the decree of damages on account of unnatural death of Shri Bhagwan against the defendants?
OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether plaintiffs have no locus standi to file the present suit?
OPD
4. Whether the plaintiffs have not come to this Hon'ble Court with clean hands? OPD
5. Whether the suit is time barred? OPD
6. Relief.

6. The suit was decided on the basis of the findings on Issue no.1. The remaining Issues no. 2 to 5 were not pressed by the defendants, and were accordingly decided against them.

7. On Issue no.1 both the Courts below have held that from the testimony of workers Kuldeep (PW-2), Randhir alias Pappu (DW-4) and contractor Shiv Om (DW-2), it was established that the deceased was in employment of the contractor, and on the fateful day, 11.11.2016, he was on duty along with the aforesaid workers. On that day, the two had seen the contractor making a phone call to the department to take permission for carrying out work on the electric line. The department had given him permission, assuring that electricity had been stopped to facilitate work by the contractor's workers. It has also come in evidence of the department witness Bhupinder Singh, SDO (DW-3) that the contractor had a licence (Ex.D-1). On 11.11.2016 permit no.57 was issued for discontinuing power supply on the feeder in village Mardan Khera DS. The post mortem report (Ex.P-2) also established that the deceased died due to electrocution and its complications, which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. Undisputedly, a policy of insurance (Ex.D-2) had been issued

by the Insurance company in favour of the contractor covering the risk by payment of compensation on account of injury and death of any of his workers during the course of employment. The contractor was not found to be covered under any of the exclusion clauses of the policy.

8. On account of these findings of negligence recorded, Insurance company was held liable to pay the compensation, which was assessed by applying the principles laid down for assessing compensation on account of death in the Motor Vehicles Act, 1988. Keeping in view the age, income and number of dependents of the deceased and by applying adequate multiplier of '14', an amount of Rs.20,15,600/- was awarded as compensation, to be paid by the Insurance company along with interest at the rate of 6% per annum from the date of filing the suit till its realisation. The plaintiffs were, accordingly, directed to affix *ad valorem* Court fees on the awarded amount of compensation within two months of the passing of the judgment.

9. Learned counsel for the Insurance company has raised two folds submissions to challenge the impugned judgment and decree. Firstly, he has contended that civil Court jurisdiction to try the suit is barred. Reliance has been placed on Section 19 of the Employees' Compensation Act, 1923 (for short 'the Act') in that regard. According to him, the compensation payable as well as the liability to pay the same, on account of death of Shri Bhagwan, who was the contractor's employee, can only be adjudicated by a Commissioner under the Act. Secondly, learned counsel has contended that the Courts have wrongly adopted the method of calculating the amount of compensation. In case the compensation becomes payable, it has to be assessed under the Act of 1923 and not under the Motor Vehicles Act, 1988. *Per contra*, learned counsel for the respondent has asserted that judgments of both the Courts below are based

on admissible evidence and provisions of the Motor Vehicles Act have been rightly applied for assessment of compensation as per law settled by this Court. There is nothing wrong about it.

10. Learned counsel for the parties have been heard.

11. The following substantial question of law arises for consideration in the instant regular second appeal:

Whether provisions of Section 3(5) and 19 the Employee's Compensation Act, 1923, bar jurisdiction of civil Courts to entertain a suit for damages/compensation on account of death or injury suffered by an employee during the course of employment.

12. To decide the issue raised in the appeal with regard to jurisdiction of a civil Court to decide the suit for compensation/damages, a reference needs to be made to Sections 3(5) and 19 of the Act of 1923, which are reproduced here under:

3. Employer's liability for compensation –

(1) to (4) xxx xxx xxx

(5) Nothing herein contained shall be deemed to confer any right to compensation on a *[employee] in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a employee in any Court of law in respect of any injury-

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the *[employee] and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

xxx xxx xxx

19. Reference to Commissioners-(1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is

or is not a *[employee]) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

12.1. The provisions of sub-section (5) of Section 3 lay down that the Act of 1923 shall not confer any right of compensation on an employee in respect of any injury suffered, if he has instituted a suit for damages in a civil Court in respect of the injury against the employer or any other person. Further, under clause (a) of sub-section (5) of Section 3, the employee shall have no right to file a suit for damages in a civil Court in respect of the injury, if he has instituted a claim for compensation with respect to the injury before a Commissioner under the Act of 1923. Under clause (b) of sub-section (5) of Section 3 also the employee shall have no right to file a suit for damages if an agreement has been reached between him and the employer providing for payment of compensation with respect to the injuries suffered as per provisions of the Act. Accordingly, there are two conditions which bar filing of civil suit for damages by an employee; (a) when he has instituted a claim for compensation with respect to injuries before a Commissioner under the Act, (b) when an agreement has been arrived at between the employee and his employer providing for payment of compensation as per provisions of the Act. The second condition is not attracted to the facts of the instant case, as no agreement is said to have been arrived at between the plaintiffs and the employer/contractor for payment of compensation.

12.2 Under provisions of sub-section (5) of Section 3, both, the civil

Court as well as Commissioner under the Act of 1923 have the jurisdiction to decide the issue of payment of damages/compensation to an employee on account of an injury suffered in the course of employment. The jurisdiction of civil Court to decide the issue is not barred. In fact, the bar is on invoking both the jurisdictions simultaneously to decide the issue of payment of damages/compensation on account of the injury suffered. In case jurisdiction of civil Court has been invoked for the purpose, the Commissioner's jurisdiction under the Act of 1923 cannot be invoked, and *vice versa*. The employee has, therefore, a choice to invoke either of the two, as considered appropriate and beneficial by him/her.

12.3 Undisputedly, the plaintiffs have not instituted any claim for compensation before a Commissioner under the Act of 1923. Therefore, the plaintiffs, being legal representatives/dependents of the deceased employee, had the right to file the suit for damages in question claiming compensation against the defendants on account of death of their bread winner, who was employee with the contractor and insured by the appellant/insurance company. The suit was rightly entertained and decided by the Courts below.

12.4 A similar view with regard to provisions of sub-section (5) of Section 3 of the Act of 1923 was taken by a Division Bench of the Delhi High Court in the judgment *United Technical Consultants Pvt. Ltd. v. Shanti Devi and others*, 2006 (8) SCT 590. Relevant paragraphs no. 9 and 10 of the judgment read as under:

9. A careful reading of the above would show that the remedies open to an injured workman or the Legal Representatives of a deceased workman under the Workmen's Compensation Act, 1923 or before a Civil Court are in the alternative. If the injured workman or the legal representatives of a deceased workman have already filed a suit before a

civil court claiming damages for the injury or death as the case may be, no claim for payment of compensation would lie before the Commissioner under the Act. Similarly, no suit for damages would lie in respect of any injury where the injured has instituted a claim before the Commissioner under the Act or where the parties have arrived at an agreement providing for payment of compensation in accordance with the provisions of the Act.

10. What is important is that neither [Section 3](#) nor any other provision of the Act excludes in specific terms the jurisdiction of a civil court to entertain a claim for payment of compensation. No such exclusion can even be implied in the face of [Section 3\(5\)](#) which recognizes the right of a workmen to approach a civil court for damages for an injury against his employer or any other person.

13. The contention of learned counsel for the appellant questioning jurisdiction of the civil Court based upon provisions of Section 19 of the Act of 1923, also needs to be considered. A reading of the head note of the Section reads, ‘Reference to Commissioners’. Sub-section (1) of Section 19 is to the effect, if a question arises “in any proceedings instituted under this Act” as to the liability of any person to pay compensation, whether the injured is an employee or not, the amount or duration of compensation, and nature and extent of disablement, such a question, in default of agreement, is to be settled by a Commissioner only. The provision refers to the specific questions of liability of any person to pay compensation, nature of disablement suffered, amount of compensation, etc. that arise in proceedings instituted before a Commissioner under the Act of 1923, and confers jurisdiction to decide the same on a Commissioner, in default of any agreement. Further, sub-section (2) of Section 19 is to the effect that no civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

13.1 Therefore, sub-section (1) confers jurisdiction on the specific questions/issues on the Commissioners under the Act, and sub-section (2) bars jurisdiction of civil Courts to settle, decide or deal with any question that is required to be dealt with by a Commissioner by or under the Act, or to enforce any liability incurred thereunder. Jurisdiction of civil Courts is barred only with respect to the questions/issues required to be dealt with by a Commissioner, or to enforce any liability incurred under the Act. Further, the bar on jurisdiction is only with respect to proceedings instituted under the Act of 1923, and not on any proceeding instituted outside its purview.

13.2 When the statute refers to specific questions arising in particular proceedings, confers jurisdiction on an authority to decide them, and creates a bar on the jurisdiction of civil Courts to settle or adjudicate such questions, there is no reason not to confine the bar imposed on jurisdiction of civil Court to those questions/issues arising in those specified proceedings only. Section 19 creates a bar on jurisdiction of civil Courts with respect to questions arising in any proceedings under the Act of 1923, as discussed in the foregoing paragraph. Such questions are to be decided by a Commissioner under the Act and not by a civil Court. The bar on jurisdiction of civil Courts is, therefore, explicitly confined to the questions arising in the proceedings instituted under the Act that need to be referred to a Commissioner for adjudication. The heading of the Section also points to this conclusion.

13.3 So far as other proceedings instituted before a civil Court by an employee, which he is entitled to as per provisions of Section 3(5) of the Act, as discussed herein before, are concerned, the provisions of Section 19 have no application. Since the bar on jurisdiction is specifically confined to the questions/issues arising in the proceedings instituted under the Act of 1923 that

need to be settled by a Commissioner, there is no mandate to extend the same to proceedings before a civil Court. Therefore, the civil suit in question filed by the plaintiffs to claim compensation/damages, is not barred by the provisions of Section 19 of the Act of 1923, as the same has no application to those proceedings.

14. In view of the discussion above, the substantial question of law stands answered that civil Court has jurisdiction to entertain a suit for damages/compensation with respect to an injury or death of an employee, if no claim for compensation before a Commissioner under the Act of 1923 has been instituted in that regard.

15. The second submission made by learned counsel for the appellant against assessment of damages by the Courts below on the basis of principles laid down under the Motor Vehicles Act, 1988, also deserves to be rejected in view of the law laid down by a Division Bench of this Court in *Paramjit Kaur and others v. State of Punjab and others*, 2008 (4) RCR (Civil) 772. It was also a case of death due to electrocution on the deceased coming in contact with high tension live wire which had fallen on road. It was held that for assessing the amount of compensation payable, principles laid down under the Motor Vehicles Act, 1988, need to be followed. The relevant para no.18 of the judgment is reproduced as under:

18. Having held that this is a clear case of negligence, incompetent workmanship and supervision on the part of the Board and its officials, which has resulted in the untimely and sudden death of Sh. Lajja Ram, we proceed to assess the amount of compensation to which the petitioners would be entitled to in the present case. Since there is nothing in the Acts governing the transmission and supply of Electricity which regulates the grant or quantum of compensation in our considered view the well settled and accepted principles adopted by the Courts for

determination of compensation to be awarded in fatal accident cases under the Motor Vehicles Act, 1988 can be adopted, as the underlying principles for determination of the quantum of compensation are the same.

15.1 In view of the law laid down by the Division Bench of this Court, no exception can be taken to the assessment of compensation payable to the plaintiffs on the basis of principles laid down under the Motor Vehicles Act, 1988, as done by the Courts below. No other provision for assessment and payment of compensation, except the one under the Act of 1923, could be pointed out by the learned counsel for the appellant. And provisions of the Act, as discussed above, do not get attracted in the instant case. Therefore, the damages/compensation payable to the plaintiffs was rightly assessed by the Courts below.

16. In view of the aforesaid, there is no ground to interfere with the concurrent findings of the Courts below.

17. Dismissed.

18. Pending miscellaneous application(s), if any, stands disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

17.11.2022

Ashwani

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No