

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.936 of 2022
and
C.M.P.(MD)No.3727 of 2022

P.K.Mookanambalam & Co.,
Rep. by one of its Partner,
K.Arumugasamy,
S/o.Kaliyappa Nadar,
No.21, Jawahar Street,
Gandhi Nagar,
Madurai – 625 020.

.. Petitioner

Versus

1.M.Sangiliraj

2.The Manager,
United India Insurance Company Ltd.,
7A, Pandiyan Building West Street,
Madurai – 625 001.

.. Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, to strike off the petition filed by the first respondent herein in M.C.O.P.No.329 of 2020, pending on the file of the IV Additional Sub-Judge, Madurai.

For Petitioner	:	Mr.Babu Rajendran
For R1	:	Mr.J.Jeyakumaran
For R2	:	Mr.J.S.Murali

ORDER

This Civil Revision Petition has been filed to strike off the petition filed by the first respondent herein in M.C.O.P.No.329 of 2020, pending on the file of the IV Additional Sub-Court, Madurai.

2. The petitioner is the second respondent in M.C.O.P.No.329 of 2020 filed before the IV Additional Sub-Court, Madurai.

3. The specific case of the petitioner before this Court is that the relief under Section 167 of the Motor Vehicles Act, 1988 is incompatible inasmuch as the first respondent has already filed W.C.No.19 of 2019 as early as on 25.02.2019 before the Deputy Commissioner of Labour, Madurai, under the provisions of the Workmen Compensation Act, 1923.

4. The submission of the petitioner is also supported by the learned counsel for the second respondent.

5. The learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Oriental Insurance Company Limited Vs. Dyamavva and others** reported in **(2013) 9 SCC 406**. Reference is made Paragraph Nos.9 and 11, which read as under:

"9. The challenge raised by the appellant Insurance Company is based on Section 167 of the Motor Vehicles Act, 1988, which is being extracted hereinunder:

***"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 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."*

It is the vehement contention of the learned counsel for the appellant, that the respondents had been awarded compensation under the Workmen's Compensation Act, 1923, and as such, they were precluded from raising a claim for compensation under the Motor Vehicles Act, 1988. Relying on Section 167 extracted above, it was pointed out that an option was available to the claimants to seek compensation either under the Workmen's Compensation Act, 1923, or the Motor Vehicles Act, 1988. The claimants, according to the learned counsel, had exercised the said option to seek compensation under the Workmen's Compensation Act, 1923. In this behalf it was pointed out, that the claimants having accepted compensation under the Workmen's Compensation Act, 1923, were precluded by Section 167 of the Motor Vehicles Act, 1988 to seek compensation (on account of the same accident) under the Motor Vehicles Act, 1988.

11. In order to succeed before this Court, it would be necessary for the appellant to establish that the respondent claimants had exercised their

option to seek compensation under the Workmen's Compensation Act, 1923, and therefore, were precluded from seeking compensation yet again under the provisions of the Motor Vehicles Act, 1988. For, it is only when such an option has been exercised, that the provisions of Section 167 of the Motor Vehicles Act, 1988 would disentitle the claimant(s) from seeking compensation under the Motor Vehicles Act, 1988."

6. The learned counsel for the first respondent/claimant submits that the ratio of the Hon'ble Supreme Court in the above referred case does not apply to the case on hand and therefore, submits that the present Civil Revision Petition is liable to be dismissed.

7. I have considered the arguments advanced by the learned counsel for the petitioner, the learned counsel for the first respondent and the learned counsel for the second respondent.

8. The provision under Section 167 of the Motor Vehicles Act, 1988 makes it very clear that an option is available to choose either of the remedy. The Hon'ble Supreme Court in the abovesaid case has concluded that the first application, which is filed, has to be considered as an option having been exercised by the workman.

9. In the present case, the petitioner has opted to claim compensation under the provisions of the Workmen Compensation Act, 1923, by filing a petition before the Deputy Commissioner of Labour, Madurai, on 25.02.2019. M.C.O.P.No.329 of 2020 was filed subsequently on 06.08.2020. Therefore, the first respondent cannot maintain M.C.O.P.No.329 of 2019 even as per the ruling of the Hon'ble Supreme Court in the above referred case. In this connection, Paragraphs 17 and 18 of the said judgment are relevant and re-produced as below:-

"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 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.

18. Even though the aforesaid determination concludes the issue in hand, ambiguity if at all, can also be resolved in the present case on the basis of the admitted factual position. The first act at the behest of the respondent claimants for seeking compensation on account of the death of Yalgurdappa B. Goudar was by way of filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 on 30-5-2003. The aforesaid claim petition was the first claim for compensation raised at the hands of the respondent claimants. If the question raised by the appellant has to be determined with reference to Section 167 of the Motor Vehicles Act, 1988, the same is liable to be determined on the basis of the aforesaid claim application filed by the respondent claimants on 30-5-2003. The compensation deposited by the Port Trust with the Workmen's Compensation Commissioner for payment to the respondent claimants was much later, on 4-11-2003. The aforesaid deposit, as already noticed above, was not at the behest of the respondent claimants, but was based on a unilateral "suo motu" determination of the employer (the Port Trust) under Section 8 of the Workmen's Compensation Act, 1923. The first participation of Dyamavva Yalgurdappa in the proceedings initiated by the Port Trust under the Workmen's Compensation Act, 1923 was on 20-4-2004. Having been summoned by the Workmen's Commissioner, she got her statement recorded before the Commissioner on 20-4-2004. But well before that date, she (as well as the other claimants) had already filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, on 30-5-2003. Filing of the aforesaid claim application under Section 166 aforesaid, in our view constitutes her (as well as that of the other dependants of the deceased) option, to seek compensation under the Motor Vehicles Act, 1988. The instant conclusion would yet again answer the question raised by the appellant herein under

Section 167 of the Motor Vehicles Act, 1988 in the same manner, as has already been determined above."

10. In view of the above, the present Civil Revision Petition filed by the owner of the vehicle is allowed. Accordingly, M.C.O.P.No.329 of 2020 is directed to be struck off from the file of the IV Additional Sub-Judge, Madurai. The Deputy Commissioner of Labour, Madurai, shall, however, expedite the compensation payable to the first respondent/employee, as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

11. This Civil Revision Petition stands allowed with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
smn2

03.04.2023

To

- 1.The IV Additional Sub-Judge,
Madurai.
- 2.The Deputy Commissioner of Labour,
Madurai.

C.R.P.(MD)No.936 of 2022

C.SARAVANAN, J.

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Order made in
C.R.P.(MD)No.936 of 2022

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