



2026:DHC:531



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 13.01.2026

+ **FAO 300/2018**

GOPAL SINGH

.....Appellant

Through: Mr. Varun Sarin and Ms. Parul Dutta,
Advocates.

versus

MAHESH LOCHI & ANR (THE NEW INDIA ASSURANCE
COMPANY LTD)

.....Respondent

Through: Mr. J.P.N. Shahi, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

CM APPL. 25508/2018 (Delay of 136 days in filing)

1. This is an application filed by the applicant/appellant seeking condonation of delay of 136 days in filing the instant appeal.
2. For the reasons stated in the application, the same is allowed, and the delay of 136 days in filing the appeal is condoned.
3. The present application is disposed of in the above terms.

FAO 300/2018

1. The present appeal has been filed under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as the "EC Act") seeking setting aside of the order dated 22.11.2017 passed by the Commissioner under the Employee's Compensation Act, 1923 in the matter of Sh. Gopal Singh Vs. Sh. Mahesh Lochib & Ors. in Case No. CEC/SD/1/22/17, and remanding back of the matter to the concerned Trial Court.



2. Vide the impugned order, the appellant's claim application was dismissed as non-maintainable for the reason that his claim application filed before the Motor Accidents Claim Tribunal ("MACT") had already been dismissed vide judgment dated 15.12.2016.
3. The only question which arises for consideration is whether, with his claim application having been dismissed by the MACT, the applicant would be estopped from filing a claim application under Section 3 of the EC Act.
4. Learned counsel for the appellant contends that despite the appellant's claim being rejected by the MACT, there is no bar to entertaining an application under the EC Act.
5. On the other hand, learned counsel for the respondent contends that in terms of Section 167 of the Motor Vehicles Act, 1988 ("MV Act"), there is a complete bar once a claim under the MV Act has been entertained and dismissed. He submits that the finding recorded in Paragraph 10 of the judgment dated 15.12.2016 rendered by the MACT, whereby the appellant was held to be negligent and liable for having caused the accident, would stop him from instituting a claim under the EC Act.
6. Before proceeding further, it is apposite to note that the EC Act is a beneficial piece of legislation and has been enacted to protect workmen/employees as far as possible from hardships arising from accidents. The factual narration available on record shows that the claimant/injured suffered a road accident on 14.04.2013, which involved vehicle number HR-38P-0235 owned by respondent no. 1 insured by respondent no. 2.
7. The claim petition came to be filed before the MACT being Suit No. 220/14. On summons being issued to respondent no. 1, being the employer



of the appellant and the owner of the car involved in the accident, he filed his written statement admitting that his vehicle was involved in the accident and that the accident was not caused due to his fault. The insurance company, i.e., respondent no. 2, also filed its written statement and questioned the maintainability of the appellant's claim, but admitted that the concerned vehicle was insured *vide* a policy that was valid and subsisting on the date of accident. The MACT, while considering the claim petition, came to the conclusion that no substantial proof of the accident had been placed on record and that the petitioner himself had been negligent.

8. In the present proceedings, the stand of respondent no. 2/insurance company is that the said finding bars the claimant from raising any claim under the EC Act. To deal with the said contention, it would be pertinent to extract Section 3(1) of the EC Act. The same reads as under:

“3. Employer's liability for compensation.—(1) If personal injury is caused to a employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable —

(a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—

(i) the employee having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

(iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.”

9. A perusal of the aforesaid shows that exceptions to liability are



entailed in the *proviso* itself. In the considered opinion on this Court, the considerations before the two Authorities under the MV Act and the EC Act are different. Even if the claimant/injured is negligent, the same would not debar him from filing a claim under the EC Act. In this regard, a gainful reference may also be made to the decision of the Coordinate Bench of this Court in New India Assurance Co. Ltd. Vs. Virender Singh¹, which observes:-

“7. Liability under the Employee’s Compensation Act, 1923 arises if an accident arises out of and in the course of employment. Liability can only be avoided if evidence is led before the Commissioner that either the employee was under the influence of liquor or drugs or the employee had willfully disobeyed an express order given to him. Negligence of an employee is not a ground to dispute or deny the compensation under Section 3. ...

** * **

9. The first argument urged on behalf of the appellant is completely misconceived as I have already referred above Section 3 of the Act which shows that there is no provision in the said section that an employee cannot claim compensation if there is negligence. All that Section 3 requires is that accident must arise out of and in the course of employment and the employee should not be under the influence of liquor or drugs or that he should have disobeyed an express order. ...”

10. Coming now to the aspect of whether Section 167 of the MV Act debars a claimant from instituting a claim under the EC Act. Section 167 of MV Act reads as under:

“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 worth noting that Section 167 of the Motor Vehicles Act, 1988

¹ 2014 SCC OnLine Del 1372



(reproduced above) is in *pari materia* with Section 110-AA of the Motor Vehicles Act, 1939. With that in mind, another gainful reference may be made to the decision of the Bombay High Court in Neelabai Mahadeo Salunkhe & Ors. Vs. Shamrao Tatoba Pawar & Ors.², which holds as follows:-

“6. Section 110-AA was inserted in the Motor Vehicles Act, 1939, by Amending Act 56 of 1969. The said section is applicable only where the death or bodily injury caused to a person gives rise to a valid claim for compensation under the Motor Vehicles Act, 1939, as well as a claim for compensation under Workmen’s Compensation Act, 1923. The said section prohibits the applicants from making double recovery of compensation by invoking both the Acts. If the application for compensation made before the Motor Accidents Claims Tribunal is rejected on the ground that the deceased himself was negligently driving the tractor in question it can hardly be said that the death of the deceased gave rise to a valid claim for compensation under the Motor Vehicles Act, 1939. If the claim for compensation made under Motor Vehicles Act could not be entertained by the Claims Tribunal for want of valid cause of action or for want of proof in respect of negligence of the driver causing the accident as alleged, section 110-AA of Motor Vehicles Act, 1939, can never be applied so as to bar the claim for compensation under Workmen’s Compensation Act, 1923. Even if the deceased was himself negligently driving the tractor leading to the accident in question, the claim for compensation under Workmen’s Compensation Act, 1923, may be still maintainable against the employer concerned or against the insurance company if the deceased died as a result of an accident which took place during the course of employment of the deceased. Section 3, Workmen’s Compensation Act provides for statutory liability of the employer to pay compensation to the workman or his dependants if the death or personal injury is caused by accident arising out of and in the course of employment of the workman concerned. The criterion to be applied for determination of an application for compensation under the Workmen’s Compensation Act, 1923, is somewhat different from the criterion to be applied for determination of a claim for compensation under section 110-A of Motor Vehicles Act, 1939.

* * *

8. The learned counsel for the respondent No. 2 has submitted that Motor Accident Claim No. 35 of 1980 was not rejected for lack of jurisdiction but was rejected on merits. The learned counsel for

² 1994 SCC OnLine Bom 205



respondent No. 2 has submitted that the bar created by section 110-AA of the above-referred Act was thus clearly attracted. The language of section 110-AA of the Act is clear and specific on this aspect. In this case, the Motor Accidents Claims Tribunal held that the death of the deceased Arjun Mahadeo Salunkhe did not give rise to a claim for compensation under the Motor Vehicles Act, 1939, as the deceased was himself negligently driving the tractor. In substance, the Tribunal held that the appellants had no cause of action for making the claim for compensation under the Motor Vehicles Act, 1939. In view of the above, I have no hesitation in rejecting this submission of the learned counsel for the respondent No. 2.

9. The learned Commissioner for Workmen's Compensation held that the party had a choice to make a claim before either of the two forums and once the claim was made before the Motor Accidents Claims Tribunal, no claim could be made for compensation in respect of the same accident invoking Workmen's Compensation Act, 1923. The proposition formulated by the trial court is too wide and is incorrect. In my opinion, the learned Commissioner for Workmen's Compensation was clearly in error."

11. This Court concurs the afore-extracted opinion rendered by the Bombay High Court. In view of the above discussion, this Court is of the considered view that the learned Commissioner erred in dismissing the appellant's claim as not maintainable. Accordingly, the impugned order is set aside, and the matter is remanded back to the Trial Court for adjudication of the appellant's claim on merits.

12. The matter be listed at the first instance before the concerned Principal District and Sessions Judge on 28.01.2026, for directions.

13. Considering that the matter has been pending for considerable time, the Trial Court is requested to make an endeavour to dispose of the matter as expeditiously as possible.

**MANOJ KUMAR OHRI
(JUDGE)**

JANUARY 13, 2026/pmc