

B. Prabhakar and anr. Vs. Bachima

B. Prabhakar and anr. Vs. Bachima

SooperKanoon Citation : sooperkanoon.com/378845

Court : Karnataka

Decided On : Dec-16-1983

Reported in : I(1985)ACC230; AIR1984Kant225

Judge : G.N. Sabhahit and ;R.S. Mahendra, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110AA; Workmen's Compensation Act, 1923 - Sections 3(5)

Appeal No. : Misc. First Appeal No. 782 of 1980

Appellant : B. Prabhakar and anr.

Respondent : Bachima

Advocate for Def. : A.J. Gunjal, Adv.

Advocate for Pet/Ap. : B.V. Acharya, Adv.

Judgement :

Sabahit, J.

1. This appeal by the employer and the insurer is directed against the Judgment and Award dated 14-4-1980 made by the Commissioner for Workmen's Compensation Chikmagalur, in KOC/WEA/4/79-80 on his file directing the employer to pay a sum of Rs. 21,000 or towards compensation to the claimant under

the Workman's Compensation Act.

2. The only point that is raised before us in this appeal is that the claimant had filed a petition before the Motor Accidents Claims Tribunal, Chickmagalur, for compensation in Miscellaneous (MVC) Case No. 16 of 1978 and therein the claim was dismissed because the deceased driver himself was responsible for causing the accident. Hence, the learned Counsel submitted before us that the petition made again before the Commissioner for Workmen's Compensation Act under the same cause of action is not tenable under S. 110AA of the Motor Vehicles Act read with S. 3(5) of the Workmen's Compensation Act.

3. Section 110-AA of the Motor Vehicles Act reads:

'Notwithstanding anything contained in the Workmen's Compensation Act, 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 claim such compensation under either of those Acts but not under both.'

4. Analysing the Section, it becomes clear that before an application could be entertained by the Accidents Claims Tribunal under S. 110 of the Motor Vehicles Act, the cause of action should be such as could be entertained by the Claims Tribunal. It must give rise to a claim for compensation under S. 110 of the Motor Vehicles Act. In other words, the accident must have occurred due to actionable negligence of the owner or the driver of the vehicle, causing injury or death of third party. When the accident occurred due to actionable negligence of the deceased himself being the driver, no claim by his legal representatives can be entertained by the Claims Tribunal under S. 110 of the Motor Vehicles Act. That, being so, S. 110-AA of the Act would not come into play at all. For, the Claims Tribunal has no jurisdiction to entertain such an application and it has, therefore, rejected the same. (Vide: *Jayamma v. S. Govindaswamy*; (1982) 1 Kant LJ 375; (1982) Lab I.C. 1666).

5. Section 3(5) of the Workmen's Compensation Act would not also be an embargo for making an application before the Workmen's Compensation Act. The

said Section reads:

'Nothing herein contained shall be deemed to confer the right to compensation by a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against an employer or any other person.'

6. No such suit was instituted before the Civil Court claiming damages. Hence, S. 3(5) of the Act also would be no bar for entertaining a petition under the 'Workmen's Compensation Act.

7. The learned Counsel appearing for the appellants further argued that penalty should not have been levied. We find that the penalty has been levied in accordance with law as there was delay in depositing the amount of compensation before the Commissioner.

8. Hence, there is no substance in this appeal. The appeal fails as devoid of merits and is dismissed.

No costs of this appeal.

9. Appeal dismissed.