

Sarla Devi and ors. Vs. Jhangi Ram and ors.

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Court : Allahabad

Decided On : Jan-28-1988

Reported in : 2(1988)ACC154

Judge : K.C. Agrawal and ;K.K. Birla, JJ.

Appellant : Sarla Devi and ors.

Respondent : Jhangi Ram and ors.

Judgement :

K.C. Agrawal, J.

1. This is an appeal under Section 110-D of the Motor Vehicles Act by the dependents of the deceased Daya Nand Sharma claiming compensation for his death on the ground that while he was driving a vehicle belonging to the U.P. Government Roadways it collided with Truck No. 61-1463 and in that he lost his life. The appellants claimed that the accident occurred due to rashness and negligence of the truck driver. The appellants had claimed Rs. 1,00,000/- as compensation.

2. The claim petition was contested by the owner of the truck on the ground that as the appellants had already been awarded compensation under the Workmen's Compensation Act, the petition filed under Section 110-A of the Motor Vehicles Act was not maintainable.

3. The Motor Claims Tribunal decided the aforesaid controversy against the appellants and holding that as the compensation under the Workmen's Compensation Act had already been awarded to the appellants, rejected the claim petition aforesaid.

4. Aggrieved the appellants have come to this Court by means of the present appeal.

5. The first and the only questions that is required to be decided by us is whether the claim petition under Section 110-A of the Motor Vehicles Act was maintainable. Section 110-AA of the Motor Vehicles Act provides:

110-AA. 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 (8 of 1923) the person entitled to compensation (may, without prejudice to the provisions of Chapter VII-A, claim such compensation) under either of those Acts but not under both.

The aforesaid section gives option regarding claims for compensation. The option given is to claim compensation either under the Workmen's Compensation Act, 1923 or by means of a petition under Section 110-A if one mode has been exercised the other is shut.

6. In the instant case the appellants had filed a claim under the Workmen's Compensation Act and have been awarded Rs. 8,000/- under it. That being so Section 110-AA would operate as a bar to the maintenance of the claim petition leading to the present appeal.

7. The above controversy had been decided by a number of decisions of our Court as well as other. These authorities cited before us are one way. They have laid down that Section 110-AA of the Motor Vehicles Act would operate as a bar to the claim of the heirs of the victims in case the Workmen's Compensation Act has already been availed. We would feel con tended by referring to a Division Bench

judgment of this Court in Smt. Kalawati v. Balwant Singh and Anr. AIR 1985 All. 124. In para 28 of the said decision Division Bench held:

In our opinion, the law as it stands cannot be stretched to say that in case of two different cases of action and where there are two different respondents, the claimant would claim compensation under both the Acts. The law is clear. Section 110-AA of the M.V. Act bars the claimant to seek compensation from more than one respondent. The law emphasises that he can claim compensation only under one forum and not both, and the choice is his. This view is in consonance with language of the section.

It is clear, therefore that the present appeal filed under Section 110-D of the Motor Vehicles Act is not maintainable and was, thus rightly rejected.

8. In the result we dismiss the appeal. No order as to costs.

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