

Raja Vs. Ajay

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Court : Madhya Pradesh

Decided On : Nov-22-2006

Reported in : 2008ACJ670; 2007(2)MPHT225; 2007(1)MPLJ325

Judge : S.K. Kulshrestha and ;S.K. Seth, JJ.

Appellant : Raja

Respondent : Ajay

Judgement :

ORDER

S.K. Kulshrestha, J.

1. This case will also govern the disposal of M.A. No. 3350/2005 as the facts of the two cases are similar and similar question of law is involved.

2. The applicants (appellants) approached the Labour Court under the Workmen's Compensation Act to seek damages on account of the injuries suffered in an accident while they were travelling in a Truck. The appellant's employer examined himself on the basis that he had objected to his being employer of the two appellants. The Commissioner for Workmen's Compensation, finding that the appellant has failed to prove the relationship of employer and the employee, dismissed the claims as not maintainable. It is against this dismissal that the appellant has approached this Court.

3. In view of the finding based on evidence that the appellants were not the employees, we find that they were not entitled to invoke the provisions of Workmen's Compensation Act. The Counsel for the respondents have invited attention to Section 167 of the Motor Vehicles Act which provides that if a person has an option to approach the Court under the Workmen's Compensation Act as also under the Motor Vehicles Act, it is for him to elect the Forum but once a Forum has been invoked, he cannot seek remedy in the other Forum provided.

Section 167 of the Motor Vehicles 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.

From a bare perusal of the section, it is luculent that for approaching the Commissioner under the Workmen's Compensation Act, 1923 the death or bodily injury to any person should give rise to a claim of compensation under the Motor Vehicles Act as also under the Workmen's Compensation Act, 1923. In accordance with the finding of the Commissioner for Workmen's Compensation, it is clear that since the two appellants were not the workmen within the meaning of the said provision, the proceedings initiated by them were without jurisdiction and nullity. Learned Counsel for the appellants has referred to the decision of Gujarat High Court in 2005 ACJ 1816, Nasimbanu and Ors. v. Ramjibhai Bachubhai Ahir and Ors.

The relevant extract of Para 5 reads as under:

Even otherwise, there is no force in the submissions raised by the learned Counsel for the appellant Insurance Company. Section 110-AA of the Motor Vehicles Act, 1939 is applicable to a person who has two remedies against the joint tortfeasors while object of Section 3(5) of the Workmen's Compensation Act, 1923, is to save the employer from double jeopardy, meaning thereby, from

multiplicity of litigation, one under the Workmen's Compensation Act, 1923 and other under the Motor Vehicles Act, 1939. Where a claimant can avail one remedy against the employer under the Workmen's Compensation Act, 1923, he is not debarred from claiming compensation under Motor Vehicles Act, 1939, against the tortfeasor. Present is a case where the claimants are receiving compensation from the employer who is statutorily bound to pay the same on the death of the deceased being his master. This is separate relationship and liability has nothing to do with the liability of a tortfeasor under the Motor Vehicles Act, 1939. In the claim petition before the Claims Tribunal, employer and insurer of tanker are not party, therefore, no claim has been raised against them. Submission raised by the appellant, if accepted, would mean that claimants should feel satisfied with whatever is paid to them under Workmen's Compensation Act, 1923, by the employer and thereby, tortfeasor escaping liability under Motor Vehicles Act, 1939, which remedy is independently available to the claimants as third party qua the offending vehicle.

The Counsel has also placed reliance on the judgment in *New India Assurance Co. Ltd. v. Mahebubnabi* : (2001)4GLR2950 . Their Lordships, in Paragraph 7.2, have observed that a workmen can in case where the employer and wrongdoer are different, proceed against them for their respective liability which are of distinct nature under both the Acts. From these judgments it can be inferred that in certain circumstances, notwithstanding that the worker has invoked the jurisdiction of the Commissioner under the Workmen's Compensation Act, there can be resort to the alternative remedy provided in Section 167 notwithstanding that provision restricts the claim to one remedy alone and not both.

4. In the appeals in hand, it is clear, that the claim of the workmen that he was employee of respondent No. 1 was not accepted in view of the preliminary objection raised by the employer to the effect that the claimants as workmen of respondent No. 1, had never been engaged by the said respondent for any work, whatsoever. However, in such a situation where the person has been non-suited on the ground that the basic foundation on which he had proceeded was non-existent, we are of the view that even after dismissal of their case on the technical ground, they cannot be deprived of the remedy of approaching the Tribunal under

the Motor Vehicles Act against the tortfeasor. Under these circumstances, it cannot be inferred that the claimant has availed both the benefits under the Workmen's Compensation Act and also under the Motor Vehicles Act. Had it been a case where compensation was granted, the other remedy would have been barred but in this case the claim itself has been dismissed as not maintainable and, therefore, the invoking of the proceedings was without jurisdiction ab initio. In this view of the matter we are of the considered view that the appellants in the present case can still approach the Tribunal under the Motor Vehicles Act, 1988.

5. In view of the above discussion, we allow these appeals to the extent that notwithstanding the order passed by the Workmen's Commissioner, the appellants shall be free to approach the Tribunal under the Motor Vehicles Act. With the above liberty to the appellants, these appeals are disposed of with costs. Counsel fee Rs. 500/- shall be payable to the Counsel for each of the respondents.

A copy of this order be placed in M.A. No. 3350/2005.

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