

Yeshwant and anr. Vs. Kishore and anr.

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Court : Madhya Pradesh

Decided On : Jan-19-1996

Reported in : I(1997)ACC204; 1998ACJ672

Judge : A.R. Tiwari, J.

Appeal No. : M.A. No. 204 of 1990

Appellant : Yeshwant and anr.

Respondent : Kishore and anr.

Advocate for Def. : T.N. Singh, Adv.

Advocate for Pet/Ap. : S.K. Jain, Adv.

Disposition : Appeal dismissed

Judgement :

A.R. Tiwari, J.

1. The unsuccessful claimants have filed this miscellaneous appeal under Section 110-D of the Motor Vehicles Act, 1939 against the order dated 4.5.1990 rendered by the 1st Motor Accidents Claims Tribunal, Barwani in Claim Case No. 64 of 1989 thereby rejecting the application of the appellants presented under Section 92-A (new Section 140) for grant of interim award.

2. Briefly stated, the facts of the case are that the respondent No. 1 is the owner of the truck bearing registration No. MTC 6911. It was insured with respondent No. 2. It was driven rashly and negligently on 9.10.1983 as a result of which, it hit Raju causing him injuries and later on his death. Raju was an employee on this truck. The appellants filed a WC Case No. 62 of 1983 under the provisions of Workmen's Compensation Act. In this case the appellants were awarded a compensation of Rs. 21,000/-. On 10.11.1989, the appellants filed an application under Section 92-A of the Motor Vehicles Act before the aforesaid Tribunal. The Tribunal held that the appellants took recourse to the case under the provisions of Workmen's Compensation Act and as such, the application was untenable in law. The Tribunal also held that the application was, in any case, barred by time, as it was filed after about six years from the date of the alleged accident. Aggrieved by this order, the appellants have filed this appeal.

3. I have heard Mr. S.K. Jain, learned Counsel for the appellants, Mr. T.N. Singh, learned Counsel for respondent No. 1 and Mr. Dandwate, learned Counsel for the respondent No. 2.

4. It is not disputed before me that when any remedy is available under two different Acts, then the aggrieved party may resort to the proceedings under any one of those Acts at its discretion. Such a party can, however, not take recourse under both the Acts. In the instant case, the appellants resorted to the remedy under the provisions of Workmen's Compensation Act and obtained the award. The appellants did not file any claim case, but filed an application under Section 92-A of the Motor Vehicles Act for interim award. The counsel for the appellants was unable to show as to how such an application, without claim case, was maintainable. He was also unable to show as to how such an application was tenable after about six years from the date of the alleged accident. Under Section 166(3) of the Motor Vehicles Act, 1988, it is provided that 'No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident.' Proviso is added that the Tribunal may entertain the application after the expiry of six months, but not later than twelve months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. Admittedly no application under Section 166 was ever filed and

that the application under Section 92-A was filed after about six years with no proper explanation for delay. Even where no limitation is prescribed, the proceedings are required to be regulated by Article 137 of the Limitation Act. The outer limit is, thus, three years. The application was barred by time in any case.

5. In *Radhabai Bhikaji v. Baluram Daluram* 1970 ACJ 403 (MP), it is held as under:

The disqualification for proceeding in the Workmen's Compensation Commissioner's Court does not start when the claimant obtains compensation elsewhere, but starts the moment he moves another court. Similarly, the disqualification to move any other Tribunal starts not when the Workmen's Compensation Commissioner awards compensation but the moment he is approached with a claim. At all events, the principle here is something even more drastic than what the Commissioner has applied in his order, the non-maintainability of claims in one alternative Tribunal if the other had been approached, looked at that way the order of Commissioner was proper and is maintained.

6. On consideration of the point involved the position emerges as under:

(a) The appellants resorted to remedy under the provisions of Workmen's Compensation Act and as such, the application before the Tribunal was untenable in law.

(b) The application under Section 92-A alone without claim case under Section 166 of the Motor Vehicles Act (old Section 110-A) was not shown to be tenable even otherwise.

(c) The application was even otherwise barred by time.

7. The counsel for the appellants was unable to throw light on the aforesaid position. The counsel for the respondents submitted that the application was untenable in law and devoid of merit.

8. In view of the aforesaid facts and features, the order passed by the Tribunal is not found to be interferable. The appeal is accordingly dismissed but without any

orders as to costs.

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