

Pawan Kumar Vs. the Commissioner Workmen Compensation and anr.

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Court : Punjab and Haryana

Decided On : Aug-13-1996

Reported in : 1997ACJ397; (1996)114PLR352

Judge : Sarojnei Saksena, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 167; Workmens Compensation Act, 1923 - Sections 3(5)

Appeal No. : Civil Revision No. 499 of 1996

Appellant : Pawan Kumar

Respondent : The Commissioner Workmen Compensation and anr.

Advocate for Def. : B.S. Sodhi, Adv.

Advocate for Pet/Ap. : R.C. Setia, Sr. Adv. and; Sidharth Sarup, Adv.

Disposition : Petition dismissed

Judgement :

Sarojnei Saksena, J.

1. Petitioner Pawan Kumar has filed this revision under Article 227 of the Constitution of India for quashing the order passed by the Commissioner, under the Workmen's Compensation Act, 1923 (in short the 'Act') on 10.1.1995.

2. Brief facts of the case are that petitioner is owner of Maruti Van bearing registration No. PAB-7530. This van was borrowed by the petitioner's friend Shri Balwant Singh. Shri Balwant Singh hired the services of driver Kidar Nath. Shri Balwant Singh along with his family members was travelling in the said van, which met with an accident near Vithipur Phathak (railway crossing) on their way from Jalandhar to Delhi when the bus bearing registration No. PAC 4638 owned by the Punjab Roadways, Taran Taran Depot rammed into the van. The bus was being driven rashly and negligently by the driver Jaswant Singh. In this accident four persons including the driver Kidar Nath died on the spot.

3. Report under Sections 279/337/388/304-A and, 427 of the Indian Penal Code, was registered against Jaswant Singh driver at Police Station Kartarpur. The persons who died and who sustained injuries in this accident filed claim petitions before the Motor Accident Claims Tribunal, Jalandhar. Smt. Pushpa Sahi, mother of the van driver Kidar Nath, Miss. Sunita Sahi sister and Balraj Kumar Sahi, brother of this van driver, filed the claim petition before the Motor Accident Claims Tribunal, Jalandhar, which was registered at No.14 of 1993. In this claim case, petitioner was also impleaded as a party along with State of Punjab and others. The Motor Accident Claims Tribunal, Jalandhar, decided the said claim petition on 2.1.1994 and awarded Rs. 51,000/- to the claimants against the State of Punjab and Jaswant Singh driver along with interest. This amount of Rs. 51,000/- and Rs. 25,500/- in lieu of interest, total amounting to Rs. 76,500/- has already, been paid to the claimants.

Smt. Pushpa Shahi, respondent No.2, also instituted a claim application on 24.2.1990 against the petitioner before the Commissioner under the Workmen's Compensation Act, which was registered as Application No. 7 of 1990. Petitioner appeared before the Commissioner, filed written statement also thereafter he remained absent and the case proceeded ex parte.

4. The Commissioner under the Workmen's Compensation Act, allowed the claim petition on 10.1.1995 and awarded Rs. 77,505/- as compensation and Rs. 23251/- as interest, total amounting to Rs. 1,00,750/- to the claimants, Smt. Pushpa Sahi, mother, Miss Sunita, minor sister, and Balraj Kumar Sahi, brother.

5. Petitioner has averred that under Section 3 Sub-section(5) of the Workmen's Compensation Act, a claim for compensation can be made either under the Workmen's Compensation Act or by filing a civil suit and workman has to choose between any law suit or proceeding under the Act. It is also averred that under Section 167 of the Motor Vehicles Act, claimant entitled to claim compensation either under the Motor Vehicles Act or under the Workmen's Compensation Act. In this case as the claimant-respondent has not only been awarded compensation along with interest, but she has also received the said amount, therefore, she had no legal right to claim compensation from the petitioner under the Workmen's Compensation Act.

6. During arguments, petitioner's learned counsel relying on Trading Engineering, New Delhi v. Smt. Nirmala Devi and Anr., AIR 1980 Punjab and Haryana 115, contended that respondent is not entitled to claim compensation from the petitioner under the Workmen's Compensation Act as she has already received compensation awarded to her under the Motor Vehicles Act.

7. Respondents learned counsel relying on Harivadan Maneklal Modi and Anr. v. Chandrasinh Chhatrasinh Parmar and hers, Accident and Compensation Cases, 1988(2) A.C.C. 254 contended that when she filed claim petition under the Motor Vehicles Act, no amount was awarded for the minors, while by the impugned order the Commissioner under the Workmen's Compensation Act has also awarded compensation to minor-claimants, who are brother and sister of the deceased she is the mother of the deceased. He also conceded that in case it is decided that she is not entitled to claim compensation under Motor Vehicles Act as well as under the Workmen's Compensation Act, she is willing to adjust Rs. 76,500/- that she has received as compensation awarded by the Motor Accident Claims Tribunal, Jalandhar. This amount may be adjusted from the amount of compensation awarded to her by the Commissioner under the Workmen's Compensation Act.

8. Provisions of Section 3 Sub-section (5) of the Workmen's Compensation Act and 167 of the Motor Vehicles Act, clearly lay down that a party can file claim petition either under the Workmen's Compensation Act or under the Motor Vehicles Act to claim compensation, but not under both the Acts. In Trading

Engineering's case (supra), it is held that 'the person entitled to compensation can claim it either under Motor Vehicles Act or under Workmen's Compensation on Act and not under both.'

9. The facts of Chandrasinh Chhatrasinh Parmar's case (supra) are distinguishable. In that case after the accident, the employer gave Rs. 21,000/- to the claimants under Section 4 of the Workmen's Compensation Act, but the claimants did not file any claim petition under this Act, they only filed claim petition under Motor Vehicles Act; claimant were parents of deceased; their claim petition was disposed by the Tribunal on the ground that they have already received compensation under the Workmen's Compensation Act. Appellants preferred the appeal against that order, which was allowed by the Division Bench of Karnataka High Court. It was held that 'the words may claim such compensation' in Section 110-AA Motor Vehicles Act, 1939 clearly indicates that claimants must make a conscious decision and opt for compensation under one or the other statute.' A distinction was drawn that as in that case the claimants never filed any claim petition before the Commissioner under the Workmen's Compensation Act, the employer of the deceased on his own in performance of his obligation cast on him under Section 4 of the Workmen's Compensation Act deposited Rs. 21,600/- before the Commissioner which does not tantamount to the claim made by the claimants under the Workmen's Compensation Act. Therefore, according to the decision of this Division Bench, the Tribunal fell into an error in dismissing the appellant-claimant's petition on this ground alone.

10. Respondents learned counsel contended that in Chandrasinh Chhatrasinh Parmar's case (supra) the claimant's advocate contended that Rs. 21,600/- received by the claimants from the Authority under the Workmen's Compensation Act, may be deducted. Thus, he also made a concession that the amount of Rs. 51,000/- plus interest awarded to respondent No. 2 by the Motor Accident Claims Tribunal may be adjusted in the amount of compensation awarded to her by the commissioner under Workmen's Compensation Act.

11. In this case, facts are different. Claimants filed claim petition before the Commissioner under Workmen's Compensation Act on 24.2.1990, which was

registered as Application No. 7 of 1990. These claimants also filed a claim petition before the Motor Accident Claim Tribunal in the year 1993 which was registered to as claim case No. 14 of 1993. The said claim case was decided by the Motor Accident Claims Tribunal on 22.1.1994, while the Commissioner under Workmen's Compensation Act decided the aforementioned Application No. 7 of 1990 on 10.1.1995.

12. From the provisions of Section 3 Sub-section (5) of the Workmen's Compensation Act and 167 of the Motor Vehicles Act, it is obvious that the claimants were not entitled to submit two claim petitions under these two Acts separately therefore, the second petition which the claimant filed before the Motor Accident Claims Tribunal, Jalandhar, cannot be held to be legally filed petition. Claim petition filed before Motor Accident Claims Tribunal, Jalandhar was clearly barred under Section 167 of the Motor Vehicles Act. For holding this view, I take support from Anthony Lobo and Ors. v. CM. Merchand, 1979 Lab.I.C. 61. Under the orders of the Motor Accident Claims Tribunal dated 22.1.1994, the State of Punjab has already paid Rs. 76,500/- to respondent No. 2, i.e., Rs. 51,000/- compensation plus Rs. 25,500/- interest. Since respondent No.2 was not legally entitled to file that claim petition before the Motor Accident Claims Tribunal, the whole of those proceedings are illegal. The aforesaid amount of Rs. 76,500/- received by respondent No.2 in lieu of the award of the Motor Accident Claims Tribunal dated 22.1.1996 is not liable to be adjusted against the amount of compensation awarded to respondent No. 2 by the Commissioner under the Workmen's Compensation Act. No doubt, the State of Punjab is not impleaded as a party in this petitions filed under Article 227 of the Constitution of India. Since the illegality committed by the claimant is apparent on the record, Motor Accident Claims Petition No.14 of 1993 decided on 22.1.1994 and the award made thereunder are liable to be and are hereby quashed. Respondent No.2 is directed to return Rs. 76,500/- to the State of Punjab within a month, failing which she will pay interest on the amount of Rs. 51,000/- at the rate of 6 per cent per annum to the State of Punjab.

13. In view of the above findings, this petition filed under Article 227 of the Constitution is dismissed along with above directions.

14. Copy of this order be sent to Advocate General, Punjab, for information and necessary action.

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