

HIGH COURT FOR THE STATE OF TELANGANA

CIVIL MISCELLANEOUS APPEAL NOs.276 of 2013 & 14 of 2022

CMA NO.276 OF 2013:

Between :

The Oriental Insurance Co.Ltd.,
Rep.by its Branch Manager,
Branch Office: "Vishwas" MVIR Wamanrao Chowk,
Date College Road, Yavatmal,
Maharashtra State.

...Appellant/
O.P.No.2

and

Smt.Ganapuram Renuka, w/o. Late Ushaiah,
Aged about 28 years, occu:Household,
r/o.Patharajampet village, Kamareddy
Mandal, Nizamabad district and others.

.... Respondents/
applicants

Jayesh s/o.Govindlal Patel,
Aged:Major, occu:Business,
r/o.C/o.Shakti Engineering Company,
Highway Road, Kamareddy, Nizamabad dist.
(owner of DCM Van)

.... Respondent/
O.P.No.1

DATE OF JUDGMENT PRONOUNCED : 03.04.2024

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

1. Whether Reporters of Local Newspapers : Yes
may be allowed to see the Judgment ?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals
3. Whether his lordship wish to see the : Yes
fair copy of the Judgment ?

***HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

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!Counsel for the Appellant : Sri A.Ramakrishna Reddy in
CMA No.276/2023;
Sri Y.S.Yella Nand Gupta for
CMA No.14 of 2022

Counsel for the Respondents : Sri Y.S.Yella Nand Gupta for
CMA No.276 of 2022 for
Respondents 1 to 4;
Sri A.Ramakrishna Reddy in
CMA No.14/2022 for R2

<Gist :

>Head Note:

? Cases referred:

1988 (2) ALT 684 ; (2006) 2 SCC 641; (2013) 9 SCC 406; 2018 (6) ALD 596

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY
CIVIL MISCELLANEOUS APPEAL NOs.276 of 2013 & 14 of 2022

COMMON JUDGMENT:

Heard Mr. A.Ramakrishna Reddy, learned standing counsel the appellant-insurance company and learned counsel Sri Y.S.Yella Nand Gupta for the appellants/claimants.

2. CMA No.276 of 2013 is an appeal filed by the insurance company to set aside the order dated 28.01.2013 in WC No.29 of 2011 and CMA No.14 of 2022 is an appeal filed by claimants to enhance the compensation amount. Considering the fact that these two appeals arise out of the same award dated 28.01.2013 passed in W.C.No.29 of 2011 by the Commissioner for Employees' Compensation and Deputy Commissioner of Labour at Nizamabad (for short, 'the Commissioner'), both appeals are heard together and decided by this common judgment.

3. The appellant in CMA No.276 of 2013 is the insurance company and the appellants in CMA No.14 of 2022 are the

claimants before the Commissioner. For convenience, the parties hereinafter are referred to as they are arrayed before the Tribunal.

4. The brief facts leading to filing of the present appeal are that deceased—Ganapuram Ushaiah was working as driver on DCM van bearing registration No.AP-10-U-727 under the employment of O.P.No.1-owner of the DCM van and on 18.09.2006 under the instructions of the OP No.1, the deceased was driving the vehicle towards Hyderabad and when he reached near Imampoor village shivar, he lost control over the van and dashed APSRTC Bus, which came in opposite direction. As a result, the deceased was crushed in the cabin and died on the spot. The Police, P.S. Toopran, registered a case in Crime No.234/2016 against the deceased and since he died on the spot, subsequently, police closed the case as abated.

5. The deceased was aged 28 years, hale and healthy at the time of accident and used to contribute his earnings to the maintenance and welfare of his family. The claimants filed application under the provisions of the Employees' Compensation Act, 1923 (for short, 'the Act') claiming

compensation of Rs.10,00,000/- on account of death of deceased in an accident against the opposite party nos.1 and 2, who are the owner and insurer of the offending van.

6. The opposite party no.1-owner of the crime vehicle remained *ex parte*.

7. The opposite party no.2-insurance company, filed written statement denying all the material allegations mentioned in the application and further contended that there is no employer and employee relationship between the O.P.1 and the deceased. It is contended that amount of compensation claimed by the applicants with interest and costs are high, excessive, exorbitant and not in accordance with law and finally, prayed to dismiss the claim against the insurance company.

8. Basing on the above pleadings, the Commissioner had framed the following issues:

- i) Whether the deceased Ganapuram Ushaiah met with an accident on 18.09.2016 during the course and out of his employment as driver on the DCM van bearing No.AP-10-U-727 under the employment of 1st opposite party and succumbed to injuries ?

ii) Whether the judgment in O.P.No.1/2009 by the IX ADJ MACT, Kamareddy has any bearing in this present case and accordingly decide the issue of liability to pay compensation?

iii) What is the amount of compensation if any entitled by the applicants ?

9. In order to substantiate the case, the 1st applicant herself was examined as P.W.1 and Exs.A1 to A5 were marked on their behalf. On behalf of the opposite party No.2-insurance company, RW.1 was examined and Exs.B1 to B3 were marked.

10. The Commissioner, on due consideration of the evidence adduced and documents placed on record, awarded compensation of Rs.4,41,990/-.

11. During the hearing of the appeals, the learned standing counsel for insurance company in CMA No.276 of 2013 submitted that the award passed by the Commissioner is contrary to statutory law laid down under Section 167 of Motor Vehicles Act, as per which, the claimants are entitled to claim compensation either under W.C.Act or MV Act and not under both. Whereas in the present case, the claimants have already filed claim petition vide O.P.No.No.585 of 2007 before the District Judge, Nizamabad

and was renumbered as O.P.No.1 of 2009 and transferred to IX Addl.District Judge, Kamareddy and was dismissed on merits vide judgment dated 13.05.2011 and therefore, the matter reached finality. If the applicants are aggrieved by the said judgment, the only option available to them is to file appeal before the Appellate Court, but filing another claim petition before the Commissioner is erroneous and not maintainable.

12. He further submitted that Commissioner failed to see that once the claim is decided by a competent Court/Tribunal, he has no jurisdiction to entertain subsequent application on the same issue; that the award passed by the Commissioner is squarely hit by the principle of *res judicata* and therefore, the finding of the Commissioner is contrary to statute and settled law and finally prayed to set aside the award passed by the Commissioner.

13. In support of his contention, learned counsel for opposite party-insurance company relied upon the following decisions on the point that that under Section 167 of the MV Act, the claimants are entitled to claim compensation either under the W.C.Act or M.V.Act, but not under both.

(i) Shaik Imam Bi and another vs. M/s.Oriental Fire and General Insurance Company, Vijayawada¹;

(ii) National Insurance Co. Ltd., vs. Mastan and another²; &

(iii) Oriental Insurance Company Limited v. Dyamavva and others³

14. CMA No.14 of 2022 is an appeal filed by the claimants seeking for enhancement of compensation. The primary ground seeking for enhancement of compensation was that the Commissioner had not appreciated the facts, evidence and failed to award the compensation as claimed by the claimants; that the Commissioner failed to award interest from the date of death of deceased or from the date of filing of the claim application and therefore, prayed to allow the appeal enhancing the compensation. The learned counsel for claimants relied on the following decision:

(i) APSRTC, Musheerabad, Hyderabad and another v. Kamle Kasturi Bai and others⁴

¹ 1988 (2) ALT 684

² (2006) 2 SCC 641

³ (2013) 9 SCC 406

⁴ 2018 (6) ALD 596

Consideration:

15. The short issue that arises for consideration is whether the application filed by the applicants under the Workmen's Compensation Act after dismissal of claim petition under the Motor Vehicles Act, 1988 is maintainable or and whether the judgment in O.P.No.1 of 2009 by the IX ADJ MACT, Kamareddy has any bearing on this present case and is hit by *res judicata* ?

16. Without going into the merits of the case, it is appropriate to adjudicate the main issue of the maintainability of the claim application filed under the Workmen's Compensation Act, 1923.

17. There is no dispute with regard to the death of the deceased in a motor vehicle accident. The insurance company vehemently contended that admittedly, the claimants have filed claim petition under the M.V.Act and the same was dismissed by the Tribunal on merits after due consideration. Therefore, the claimants are not entitled to file another claim application under the Workmen's Compensation Act and the same is hit by principle of *res judicata*.

18. The challenge raised by the insurance company is based on Section 167 of the M.V.Act. At this stage, it is relevant to refer Section 167 of the MV Act.

“Section 167. Option regarding claims for compensation in certain cases:- 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 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”.

19. A perusal of the impugned award passed by the Commissioner would show that at the first instance, the claimants filed the claim petition under M.V.Act before the IX Additional District Judge at Kamareddy claiming compensation on account of death of the deceased in a road accident. The Tribunal, on due consideration of the material placed on record and considering the evidence, dismissed the claim petition vide O.P.No.1 of 2009 on 13.05.2011; that subsequent to dismissal of the O.P., the claimants filed another claim application under the Workmen’s Compensation Act before the Commissioner,

without availing appropriate remedy of filing an appeal before the Appellate Tribunal.

20. As per the decision of **Shaik Imam Bi** (supra), relied upon by the insurance company, *“the Tribunals under the Motor Vehicles Act and the Workmen’s Compensation Act have concurrent jurisdiction. The option lies with the claimant to choose the one or the other tribunal. Of course, if the workman chooses a particular Tribunal, it will not be open to him to choose the other one”*.

21. In **Mastan** (supra), relied by the insurance company, the Hon’ble Supreme Court held as under:

“23. The “doctrine of election” is a branch of “rule of estoppel”, in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both. Although there are certain exceptions to the same rule but the same has no application in the instant case.

29. A party suffering an injury or the dependent of the deceased who has died in the course of an accident arising out of use of a motor vehicle may have claims under different statutes. But when the cause of action arises under different statutes and the claimant elects the forum under one Act in preference to the other, he cannot thereafter be permitted to raise a contention which is available to him only in the former.”

22. In **Dyamavva** (supra), the Hon'ble Apex Court while referring the decision in **V.Mastan** (supra), held as under:

"9. The challenge raised by the appellant Insurance Company is based on Section 167 of the Motor Vehicles Act, 1988, which is being extracted hereinunder:

"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."

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11. In order to succeed before this Court, it would be necessary for the appellant to establish that the respondent claimants had exercised their option to seek compensation under the Workmen's Compensation Act, 1923, and therefore, were precluded from seeking compensation yet again under the provisions of the Motor Vehicles Act, 1988. For, it is only when such an option has been exercised, that the provisions of Section 167 of the Motor Vehicles Act, 1988 would disentitle the claimant(s) from seeking compensation under the Motor Vehicles Act, 1988."

23. From the above discussion and legal position, what emerges is that the applicants opted to file claim for the compensation under the provision of the Motor Vehicles Act, 1988, however, the same was dismissed on merits. Therefore, the applicants are not entitled/estopped from filing another application again for compensation under the provisions of the Workmen's Compensation Act and the said application is hit *res judicata*.

However, the Commissioner without considering the bar, as contemplated under Section 167 of the MV Act, had erred in entertaining the claim application filed under the provisions of the Workmen's Compensation Act, though earlier application filed by the applicant seeking the same relief under the provision of the MV Act, was dismissed. Further, the applicants instead of availing remedy of appeal against the order of Tribunal, approached the Commissioner claiming compensation under the Workmen's Compensation Act.

24. In **Kamle Kasturi Bai** (supra), relied upon by the learned counsel for applicants, the deceased was working as driver in APSRTC; that the wife of the deceased therein made application on 23.10.2008 to the Depot Manager for settlement of compensation under the Workmen's Compensation Act; that the appellants therein awarded the compensation amount of Rs.2,85,360/- to the claimants and was received by the claimants; that later, the claimants have also filed claim petition under the Motor Vehicles Act and the Tribunal awarded compensation of Rs.7,31,000/- to the claimants. The Hon'ble High Court held that

the claimants having never exercised their option to seek compensation under Workmen's Compensation Act, 1923 could not be deemed to be precluded from seeking compensation under Section 166 of the Motor Vehicles Act, 1988 and dismissed the appeal filed by the insurance company.

25. In view of the above discussion, the facts in **Kamle Kasturi Bai** (supra), relied upon by the learned counsel for claimants and the facts in the present case are different and therefore, the said decision has no application to the facts of present case and does not come to the aid of the claimants.

26. In the case on hand, the claimants, at the first instant, filed the claim petition seeking compensation under Section 166 of the M.V.Act before the Tribunal vide O.P.No.1 of 2009 and the Tribunal, on due consideration of the oral and documentary evidence, had dismissed the said O.P., on 13.05.2011 on merits. Subsequently, the claimants, instead of availing remedy of filing of appeal, filed application under the provisions of the Workmen's Compensation Act and that the Commissioner awarded the compensation. In the light of bar under Section 167

of M.V.Act, the applicants have no cause of action for filing subsequent claim application under the Workmen's Compensation Act and is hit by *res judicata*.

27. In view of the above discussion, evidence, material placed on record and the legal position, the Commissioner had erred in entertaining the claim application filed under the Workmen's Compensation Act. Therefore, there is considerable force and merit in the contention of the learned standing counsel for insurance company.

28. In the result, this C.M.A.No.276 of 2013 is allowed setting aside the order dated 28.01.2013 passed by the Commissioner. In view of disposal of CMA No.276 of 2013, C.M.A.No.14 of 2022 is dismissed. There shall be no order as to costs. Pending miscellaneous petitions if any shall stand closed.

LAXMI NARAYANA ALISHETTY,J

Date: 03.04.2024

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