

NATIONAL INSURANCE COMPANY LIMITED v. SUSHEELA , (2023-4)212 PLR 779 (HP)

HIMACHAL PRADESH HIGH COURT

Before: Justice Ajay Mohan Goel.

NATIONAL INSURANCE COMPANY LIMITED - Appellant,

Versus

SUSHEELA and others - Respondent.

FAO No.55 of 2023

(i) Motor Vehicles Act, 1988 (59 of 1988) Section 166 - If a Tribunal constituted under the Motor Vehicles Act, while deciding a petition under Section 166 of the Act, comes to the conclusion that the petition is not maintainable under the provisions of Section 166, then it can not convert itself into a Commissioner under the Employee's Compensation Act and thereafter, decide the claim petition accordingly - Presiding Judge of the MACT, was not notified as a Commissioner under the Employee's Compensation Act, 1923, by the appropriate Government and was having no jurisdiction either to entertain or adjudicate any claim/petition etc. in terms of the provisions of the Employee's Compensation Act, 1923 - Award - Set aside.

(ii) Motor Vehicles Act, 1988 (59 of 1988), Section 166 - When the MACT had come to the conclusion that the claim petition filed before it under Section 166, was not maintainable, it ought to have had closed the proceedings and could have given liberty to the claimants to invoke the alternative remedy - Driver / Employee of owner died while trying to extinguish fire in the tanker - Tribunal returned the findings that the accident, in which deceased lost his life, was not on account of negligence of the owner of the vehicle - Tribunal however granted compensation to the claimants by applying the provisions of the Employee's Compensation Act, 1923 - It could not confer upon itself the jurisdiction of Commissioner under the Employee's Compensation Act - Award - Set aside.

*Mr.Jagdish Thakur, for the appellant. Mr.Ajit Sharma, for respondents No.1 to 4.
Mr.P.D.Nanda, for respondent No.5.*

Ajay Mohan Goel, J - (Oral) - (15.12.2023) - By way of this appeal, the Appellant/Insurance Company has prayed for setting aside of the award passed by the learned Motor Accident Claims Tribunal (CBI Court), Shimla, H.P. in MAC Petition No.1-S/2 of 2019, titled as Susheela and others v. Simi Nanda and another, dated 18.01.2023.

2. Brief facts necessary for the adjudication of this appeal are that the respondent-

Claimants filed a claim petition before learned Motor Accident Claims Tribunal, praying for compensation on account of the death of Shri Satish Kumar, the predecessor-in-interest of the claimants, who unfortunately died in the course of his employment as a Driver on an Oil Tanker bearing Registration No.HP-51B-0710. Record reveals that the unfortunate death of Shri Satish Kumar took place on 23.06.2018, at around 3.30 p.m. at place Raipur Rani Naraingarh road near Sonu Dhaba, where the deceased after parking his vehicle, noticed fire at the bottom portion of the tanker and while trying to extinguish the fire, suffered multiple injuries and as a result whereof, he died on 28.06.2018.

3. The claim petition was resisted inter alia on the ground that the same was not maintainable under the provisions of the Motor Vehicles Act.

4. On the basis of respective pleadings of the parties, the following issues were framed by the learned Tribunal:-

1. Whether Sh. Satish Kumar, died in a motor vehicle accident of Oil Tanker bearing registration No.HP- 51B-0710, which occurred on 23.06.2018 at 3:30 p.m., at place Raipur Rani, Naraingarh Road, Tehsil Panchkula, Haryana, due to the negligence of its owner i.e. respondent No.1 Smt. Simi Nand, on a public way? OPP

2. If issue No.1 is proved in affirmative whether the petitioners are entitled for the grant of compensation, if so, to what amount and from whom? OPP

3. Whether the petition is not maintainable? OPR

4. Whether the petitioners have no cause of action to file the petition? OPR

5. Whether the deceased was not having valid and effective driving licence at the time of alleged accident to drive the aforesaid Oil Tanker? OPR2

6. Whether the aforesaid Oil Tanker was driven in contravention to the terms and conditions of the insurance policy at the time of alleged occurrence? OPR-2

7. Relief.

5. On the strength of the evidence, which was led by the parties, in support of their respective contentions, the issues so framed were decided as under:-

Issue No.1 : Yes, but not because of negligence of R-1.

Issue No.2 : Yes, from respondent No.2.

Issue No.3 : See findings

Issue No.4 : No.

Issue No.5 : No.

Issue No.6 :No.

Relief :Petition is allowed as per operative part of the award.

6. While deciding Issue No.1, learned Tribunal observed that though an employee of respondent No.1 before the learned Tribunal had died while trying to extinguish fire but said event was not proved to be on account of negligence of the employer/ respondent No.1.Hence,Issue No.1 is answered accordingly.In other words,learned Tribunal returned the findings that the unfortunate accident,in which deceased lost his life,was not on account of negligence of the owner of the vehicle.

7. Thereafter,while deciding Issue No.2,learned Tribunal by relying upon the judgment of this Court in FAO No.188 of 2015, titled as *Reliance General Insurance Company Limited v. Smt. Shakuntla Devi and others*,went on to grant compensation to the claimants by applying the provisions of the Employee's Compensation Act,1923,after observing that this Court had also done so in FAO No.188 of 2015 (supra).

8. Learned Counsel for the appellant has argued that once the learned Tribunal held and rightly so, that the death of the deceased was not on account of negligence of the owner of the vehicle, then,the claim petition was liable to be dismissed and the learned Tribunal was having no jurisdiction in law to grant compensation to the claimants by applying the provisions of the Employee's Compensation Act and by conferring upon itself the jurisdiction of a Commissioner under the Employees Compensation Act. He further stated that perversity on the face of the impugned award was also demonstrable from the fact that while deciding Issue No.3-whether the petition was maintainable,learned Tribunal held and rightly so that the same was not maintainable under Section 166 of the Motor Vehicles Act, yet thereafter it erred in holding that compensation can be granted in view of the provisions of the Employee's Compensation Act,1923.Accordingly, learned Counsel submitted that as the award passed by the learned Tribunal is bad in law,the appeal be allowed.

9. Learned Counsel for the respondents have opposed the appeal inter alia on the ground that there was no infirmity in the award passed by learned Tribunal as it simply followed the law as was declared by this Court in FAO No.188 of 2015.Accordingly, they have prayed that as the appeal is without any merit,the same be dismissed.

10. I have heard learned Counsel for the parties and also carefully gone through the award passed by the learned Tribunal.

11. The unfortunate death of Shri Satish Kumar took place while he was trying to extinguish the fire which he noticed in the bottom portion of the Tanker bearing Registration No.HP-51B-0710,on which,he was engaged as a Driver.

12. On the basis of the pleadings of the parties, learned Tribunal had framed a specific Issue as to whether the petition having been filed under Section 166 of the Motor Vehicles Act was maintainable and this issue was decided against the claimants and the findings so returned have not been assailed before this Court.

13. Chapter X of the Motor Vehicle Act, 1988 (as it was prevailing at the time of the accident) deals with liability without fault in certain cases and Chapter XI deals with insurance of motor vehicles against third party risks. Chapter XII deals with Claims Tribunals and Section 166 of the Motor Vehicles Act deals with application for compensation.

14. As per Section 165 of the Motor Vehicles Act, the State Government may by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals for such areas as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of the motor vehicles, or damages to any property or a third party so arising, or both. Sub-Section 3 thereof provides that a person shall not be qualified for appointment as a member of a Claims Tribunal unless he—(a) is, or has been, a Judge of a High Court, or (b) is, or has been a District Judge, or (c) is qualified for appointment as a High Court Judge or as a District Judge.

15. On the other hand, the Employee's Compensation Act, 1923, as amended from time to time, has been enacted to provide for payment of certain classes of employers to their employees of compensation for injury by accident. The employer's liability for compensation is dealt for in Section 3 of the Employees Compensation Act, 1923. The amount of compensation to which a workman is entitled to is spelled out in Section 4 of the Employee's Compensation Act and the mechanism to decide a question as to the liability of any person to pay compensation etc. is provided for in Chapter II of the Employees Compensation Act, 1923 in general and Section 22 thereof in particular. Section 19 of the Act provides as to in what cases, the reference of any question arises in any proceedings under the Act is to be referred to the Commissioner and Section 20 thereof, which deals with appointment of Commissioners provides as under:-

*20. Appointment of Commissioners. (1) The State Government may, by notification in the Official Gazette, appoint any person who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or a pleader or is or has been a Gazetted officer for not less than five years having educational qualifications and experience in personnel management, human resource development and industrial relations] to be a Commissioner for 2 [Employee's] Compensation for such ^{3]}***] area as maybe specified in the notification.*

*[(2) Where more than one Commissioner has been appointed for any ^{3]}T***] area, the State Government may, by general or special order, regulate the distribution of business between them.]*

[(3)] Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

(4)] Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860)

16. Whereas under the provisions of the Motor Vehicles Act, the statutory sanction is that a

person shall not be qualified for appointment as a member of a Claims Tribunal unless he is or has been, a Judge of a High Court, or he is, or has been a District Judge, or qualified for appointment as a High Court Judge or as a District Judge, the State Government under the Employees Compensation Act, 1923, is empowered to appoint any person who has been a member of State Judicial Service for a period not less than five years or his or is or has been for not less than five years an advocate or a pleader or is or has been a Gazetted Officer for not less than five years having educational qualifications as mentioned therein to be a Commissioner for Employee's Compensation for such areas as may be specified in the notification. Thus, powers of the Commissioner have to be exercised inter alia by a member of the State Judicial Service who has been or was appointed by way of a notification in the Official Gazette.

17. Herein, the Presiding Judge of the learned Tribunal, which passed the impugned order, was not notified as a Commissioner under the Employee's Compensation Act, 1923, by the appropriate Government. Meaning thereby that the Presiding Judge of the learned Tribunal was having no jurisdiction either to entertain or adjudicate any claim/petition etc. in terms of the provisions of the Employee's Compensation Act, 1923. This extremely important aspect of the matter has not been appreciated by learned Tribunal while deciding the claim petition. In fact, when the learned Tribunal had come to the conclusion that the claim petition filed before it under Section 166 of the Motor Vehicles Act was not maintainable, learned Tribunal ought to have had closed the proceedings and if it deemed fit, it could have given liberty to the claimants to invoke the provisions of appropriate statute before the appropriate forum. However, rather than doing so, learned Tribunal conferred upon itself the jurisdiction of Commissioner under the Employee's Compensation Act, which could not have been done. This has resulted in gross perversity as argued by learned Counsel for the appellant.

18. Now, I will deal with the judgment passed by this Court in FAO No. 188 of 2015, titled as *Reliance General Insurance Company Limited v. Smt. Shakuntla Devi and others*, which has been relied upon by learned Claims Tribunal. A perusal of this judgment demonstrates that therein the Court was dealing with appeals arising out of claim petition which stood allowed by learned Claims Tribunal under the provisions of Motor Vehicles Act itself. While deciding these appeals, Hon'ble Coordinate Bench of this Court came to the conclusion that the claim petitions, in light of facts involved therein, were not maintainable under the provisions of the Motor Vehicles Act. Thereafter, this Court moulded the relief by invoking the provisions of the Employee's Compensation Act. However, there is no adjudication made by Hon'ble Coordinate Bench that if a Tribunal constituted under the Motor Vehicles Act, while deciding a petition filed before it under Section 166 of the Motor Vehicle Act, comes to the conclusion that the petition is not maintainable under the provisions of Section 166 of the Motor Vehicles Act, then it can convert itself into a Commissioner under the Employee's Compensation Act and thereafter, decide the claim petition accordingly. Therefore, this Court is of the view that the judgment passed by this Court in FAO No. 188 of 2015 has been completely misread and misconstrued by learned Tribunal while venturing to decide the claim petition in terms of the provisions of the Employee's Compensation Act. The contention of learned Counsel for the respondents that the judgment of this Court in FAO No. 188 of 2015 (supra), in fact, consists of a direction to the Motor Accident Claims

Tribunals to adjudicate the cases in terms of the said judgment is incorrect because, what this Court did while directing the Registry to circulate copy of the said judgment to all the Motor Accident Claims Tribunals for compliance was, that it directed the Claim Tribunals to see the terms of the Insurance Policy and fix the liability in terms of the policy, as per the law laid down by this Court in *National Insurance Company Ltd. v. Asha Devi and others*, (2011) 1 ACJ 649. A perusal of the judgment passed by this Court in *National Insurance Company Limited v. Asha Devi and others*, leaves no room for any doubt that in this judgment also, there was no direction issued by the Hon'ble Coordinate Bench that the Motor Accident Claims Tribunals can convert itself into the Court of Commissioner under the Employee's Compensation Act and it was only with respect to what is contained in paras 16 and 17 of that judgment that this observation was made by Hon'ble Coordinate Bench that it is the duty of the Tribunal to see as to what are the terms of the Insurance Policy and should fix the liability of the respondents in terms of the Insurance Policy

19. In view of above discussion, this appeal is allowed and the impugned award passed by the Court of learned Motor Accident Claims Tribunal (CBI Court), Shimla, H.P. dated 18.01.2023, is set aside. However, now the question arises as to whether the claimants can be left remedy less? The Answer is no, because the claimants are entitled to invoke the jurisdiction of Employee's Compensation Commissioner and seek compensation from the said Court, therefore, this Court hereby allows the claimants to file a claim petition under the provisions of the Employee's Compensation Act, if so advised, seeking compensation on account of death of their predecessor-in-interest. In the event of the claim being preferred by the claimants on or before 31.01.2024, then, the same shall be decided by learned Commissioner, on merit, without venturing into the issue of limitation as it will be presumed that the claim petition has been filed within limitation. It is further observed that in the event of any such petition being filed, then the same shall be decided by learned Commissioner, on the basis of the pleadings before it, uninfluenced by any observation made by this Court in this order and an endeavour shall be made to decide the same within a period of six months as from the date of filing of the same.

The appeal stands disposed of in above terms, so also pending miscellaneous application(s), if any.

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