

SUPREME COURT OF INDIA

Oriental Insurance Co. Ltd.

Vs.

Dyamavva

C.A.No.937 of 2013

(Dr. B.S. Chauhan and Jagdish Singh Khehar JJ.)

05.02.2013

JUDGMENT

JAGDISH SINGH KHEHAR, J.

1. Yalgurdappa B. Goudar was employed as a Pump Operator in the Mechanical Engineering Department, and posted in the Old Power House, of the Mormugao Port Trust, Mormugao (for short, 'the Port Trust'). While discharging his duties in his aforesaid capacity during the course of the second shift on 19.4.2003, while pillion riding on a motorcycle bearing registration mo.GA 02 L 8479, he was hit by a tipper bearing registration no.TM 07 V 4548. Consequent upon the injury suffered by Yalgurdappa B. Goudar in the said accident, Yalgurdappa B. Goudar died on the spot. The aforesaid tipper was insured with the Oriental Insurance Company, i.e., the appellant herein.

2. The most important factual aspect in the present controversy is, that Dayamavva Yalgurdappa the widow, and the dependants of Yalgurdappa B. Goudar, filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 on 30.5.2003. Through the aforesaid claim petition, the widow and the children of the deceased Yalgurdappa B. Goudar sought compensation on account of the motor accident in the course whereof, the husband/father of the claimants had lost his life.

3. It is not a matter of dispute, that the Port Trust addressed a communication dated 4.11.2003 to the Workmen's Compensation Commissioner, Goa intimating him of the motor accident referred to hereinabove. Simultaneously, with the aforesaid intimation, the Port Trust deposited an amount of Rs.3,26,140/- with the Workmen's Compensation Commissioner, as compensation payable to the

dependants of the deceased Yalgurdappa B. Goudar under the Workmen's Compensation Act, 1923. Consequent upon the receipt of the aforesaid intimation (as also, the deposit of compensation), the Workmen's Compensation Commissioner issued a notice to the dependants of the deceased Yalgurdappa B. Goudar. Consequent upon the service of notice on the dependants of the deceased, hearing in the matter pertaining to disbursement of compensation to the dependants of Yalgurdappa B. Goudar, was fixed for 20.4.2004. On 20.4.2004 Dyamavva Yalgurdappa, the widow of the deceased Yalgurdappa B. Goudar, appeared before the Workmen's Compensation Commissioner and her statement was recorded by the Commissioner. In her statement she acknowledged the demise of her husband in a motor accident, while working in the employment of the Port Trust, in the second shift on 19.4.2003. She also placed on record the fact, that she had two sons and a daughter who were also dependents of the deceased. Based on her statement, she prayed for the release of the compensation deposited by the Port Trust, with the Workmen's Compensation Commissioner. Since the claim raised by Dyamavva Yalgurdappa, widow of Yalgurdappa B. Goudar was not contested by the employer, the amount of Rs.3,26,140/- deposited by the Port Trust with the Workmen's Compensation Commissioner, was ordered to be mainly released to the Dyamavva Yalgurdappa, widow of Yalgurdappa B. Goudar, and partly to the daughter of the deceased Yalgurdappa B. Goudar. Out of the aforesaid amount, the daughter was held to be entitled to a sum of Rs.50,000/-. The order dated 29.4.2004 is available on the record of this case. A relevant extract of the same is reproduced hereunder, which fully substantiates the factual position narrated hereinabove :

“The opp. Party Mormugao Port Trust vide their letter dated 04.11.2003 had informed that Shri Gowder Yellagurdappa, ex-Pump Operator who was posted at the Old Power House while working on the second shift on 19.04.2003 met with an accident with a tipper truck and succumbed to the injuries sustained. The management further mentioned the date of birth of the deceased employee was 01.04.1956 and his monthly salary was Rs.9,276/- at the time of his death and in terms of Workmen's Compensation Act, 1923, they deposited an amount of Rs.3,26,140/- in this office towards compensation to be paid to the dependants of the deceased employee.

Notice was served on the parties and the hearing was fixed on 20.04.2004. During the course of hearing on 20.04.2004 the applicant stated that she is the wife of late Yellagurdappa Goudar. Her husband was working for Mormugao Port Trust in Mechanical Engineering Department as a Pump Operator. On 19.04.2003 her husband met with an accident. He was hit by a

truck and succumbed to the injuries. He died on the spot. Besides her, she has got two sons viz., Shri Balappa Y. Goudar and Shri Basavraj Y. Goudar aged 21 years and 19 years respectively and one daughter Miss Yallava Y. Goudar, daughter aged 20 years who were dependants on the earning of her husband. She further stated that she is aware that the Opp. Party has deposited an amount of Rs.3,26,140/- with this Authority which according to her the amount has been properly worked out as per Workmen's Compensation Act. She prayed that the said amount may be awarded to her and children as per the Workmen's Compensation Act.

The representatives of the Opp. Party Mr. S.V. Verekar, Labour Officer, who was present during the course of hearing on 20.04.2004 did not desire to cross the Applicant.

After having verified the records produced in the course of hearing and the fact that the Opp. Party deposited the amount accepting the liability to pay the compensation, I hereby order to pay the compensation to the dependants of late Yellagurdappa Goudar in the following manner:

.....”

Consequently, the aforesaid compensation under the Workmen's Compensation Act, 1923 came to be released to the widow and daughter of Yalgurdappa B. Goudar.

4. Besides the compensation determined under the Workmen's Compensation Act, 1923, the claim raised by Dyamavva Yalgurdappa under Section 166 of the Motor Vehicles Act, 1988 was independently determined by the Motor Accident Claims Tribunal, Bagalkot. Vide an award dated 15.7.2008, the said Motor Accident Claims Tribunal awarded the claimants compensation of Rs.11,44,440/-. Out of the aforesaid compensation, the Motor Accident Tribunal ordered a deduction of Rs.3,26,140/-, (i.e., the amount which had been disbursed to the claimants by the Workmen's Compensation Commissioner, vide order dated 29.4.2004). In the aforesaid view of the matter, a sum of Rs.8,18,300/- was ordered to be released to the claimants.

5. The order passed by the Motor Accident Claims Tribunal, Bagalkot, dated 15.7.2008 was assailed by the Oriental Insurance Company Ltd, i.e., the appellant herein, before the High Court of Karnataka Circuit Bench at Dharwad (hereinafter referred to as the 'High Court'). By its order dated 14.9.2011, the High Court affirmed the compensation awarded to the claimants by the Motor Accident Claims

Tribunal, Bagalkot. Through the instant appeal, the Oriental Insurance Company Ltd. has assailed the orders dated 15.7.2008 and 14.9.2011 passed by the Motor Accidental Claims Tribunal, Bagalkot, and the High Court respectively, awarding compensation to the dependants of Yalgurdappa B. Goudar under Section 166 of the Motor Vehicles Act, 1988.

6. 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.”

It is the vehement contention of the learned counsel for the appellant, that the respondents had been awarded compensation under the Workmen's Compensation Act, 1923, and as such, they were precluded from raising a claim for compensation under the Motor Vehicles Act, 1988. Relying on Section 167, extracted above., it was pointed out, that an option was available to the claimants to seek compensation either under the Workmen's Compensation Act, 1923, or the Motor Vehicles Act, 1988. The claimants, according to learned counsel, had exercised the said option to seek compensation under the Workmen's Compensation Act, 1923. In this behalf it was pointed out, that the claimants having accepted compensation under the Workmen's Compensation Act, 1923, were precluded by Section 167 of the Motor Vehicles Act, 1988, to seek compensation (on account of the same accident), under the Motor Vehicles Act, 1988. In order to buttress the aforesaid submission, learned counsel for the appellant-Insurance Company has placed reliance on a decision rendered by this Court in Anr., (2006) 2 SCC 641. Pointed reliance was placed on the following observations recorded therein: “33. On the establishment of a Claims Tribunal in terms of Section 165 of the Motor Vehicles Act, 1988, the victim of a motor accident has a right to apply for compensation in terms of Section 166 of that Act before that Tribunal. On the establishment of the Claims Tribunal, the jurisdiction of the Civil Court to entertain a claim for compensation arising out of a motor accident, stands ousted by Section 175 of that Act. Until the establishment of the Tribunal, the claim had to be enforced through the Civil

Court as a claim in tort. The exclusiveness of the jurisdiction of the Motor Accidents Claims Tribunal is taken away by Section 167 of the Motor Vehicles Act in one instance, when the claim could also fall under the Workmen's Compensation Act, 1923. That Section provides that death or bodily injury arising out of a motor accident which may also give rise to a claim for compensation under the Workmen's Compensation Act, can be enforced through the authorities under that Act, the option in that behalf being with the victim or his representative. But Section 167 makes it clear that a claim could not be maintained under both the Acts. In other words, a claimant who becomes entitled to claim compensation both under the Motor Vehicles Act 1988 and under the Workmen's Compensation Act because of a motor vehicle accident has the choice of proceeding under either of the Acts before the concerned forum. By confining the claim- to the authority or Tribunal under either of the Acts, the legislature has incorporated the concept of election of remedies, insofar as the claimant is concerned. In other words, he has to elect whether to make his claim under the Motor Vehicles Act 1988 or under the Workmen's Compensation Act 1923. The emphasis in die Section that a claim cannot be made under both the enactments, is a further reiteration of the doctrine of election incorporated in the scheme for claiming compensation. The principle where, either of two alternative tribunals are open to a litigant, each having jurisdiction over the matters in dispute, and he resorts for his remedy to one of such tribunals in preference to the other, he is precluded, as against his opponent, from any subsequent recourse to the latter [see R.V. Evans (1854) 3 E B 363] is fully incorporated in the scheme of Section 167 of the Motor Vehicles Act, precluding the claimant who has invoked the Workmen's Compensation Act from having resort to the provisions of the Motor Vehicles Act, except to the limited extent permitted therein. The claimant having resorted to the Workmen's Compensation Act, is controlled by the provisions of that Act subject only to the exception recognized in Section 167 of the Motor Vehicles Act.

34. On the language of Section 167 of the Motor Vehicles Act, and going by the principle of election of remedies, a claimant opting to proceed under the Workmen's Compensation Act cannot take recourse to or draw inspiration from any of the provisions of the Motor Vehicles Act 1988 other than what is specifically saved by Section 167 of the Act. Section 167 of the Act gives a claimant even under the Workmen's Compensation Act, the right to invoke the provisions of Chapter X of the Motor Vehicles Act 1988. Chapter X of the Motor Vehicles Act 1988 deals with what is known as 'no fault liability

in case of an accident. Section 140 of the Motor Vehicles Act, 1988 imposes a liability on the owner of the vehicle to pay the compensation fixed therein, even if no fault is established against the driver or owner of the of the vehicle. Sections 141 and 142 deal with particular claims on the basis of no fault liability and Section 143 re- emphasizes what is emphasized by Section 167 of the Act that the provisions of Chapter X of the Motor Vehicles Act, 1988, would apply even if the claim is made under the Workmen's Compensation Act. Section 144 of the Act gives the provisions of Chapter X of the Motor Vehicles Act 1988 overriding effect.”

Based on the observations extracted hereinabove, it was the vehement contention of the learned counsel for the appellant, that the respondents- claimants, having accepted compensation under the Workmen’s Compensation Act, 1923, must be deemed to have exercised their option to seek compensation under the Workmen’s Compensation Act, 1923. As such, they could not once again seek compensation under Section 166 of the Motor Vehicles Act, 1988.

7. In order to succeed before this Court, it would be necessary for the appellant to establish, that the respondents-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.

8. For determining the legal as well as the factual position emerging out of the issue canvassed at the hands of the learned counsel for the appellant, it is necessary for us to determine the ambit and scope of Sections 8 and 10 of the Workmen’s Compensation Act, 1923. The aforesaid provisions are accordingly being extracted hereunder : “8. Distribution of compensation.—

(1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased workman, an employer may make to any dependant advances on account of compensation of an

amount equal to three months' wages of such workman and so much of such amount as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1), as compensation in respect of a deceased workman] the Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependant of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant.

(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an

application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person, whom the Commissioner thinks best fitted to provide for the welfare of the workman.

(8) Where an application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation to as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

(9) Where the Commissioner varies any order under sub-section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31.”

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10. Notice and Claim.—

(1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him [withintwo years] of the occurrence of the accident or in case of death [withintwo years] from the date of death:

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable the accident shall be deemed to have occurred on the first

of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease:

Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work the period of two years shall be counted from the day the workman gives notice of the disablement to his employer:

Provided further that if a workman who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:

Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim—

(a) if the claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed] had knowledge of the accident from any other source at or about the time when it occurred:

Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) The State Government may require that any prescribed class of employers shall maintain at these premises at which workmen are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice book is maintained, by entry in the notice book.”

9. Sub-sections (1) to (3) of Section 8 extracted above, leave no room for any doubt, that when a workman during the course of his employment suffers injuries resulting in his death, the employer has to deposit the compensation payable, with the Workmen’s Compensation Commissioner. Payment made by the employer directly to the dependants is not recognized as a valid disbursement of compensation. The procedure envisaged in Section 8 of the Workmen’s Compensation Act, 1923, can be invoked only by the employer for depositing compensation with the Workmen’s Compensation Commissioner. Consequent upon such “suo motu” deposit of compensation (by the employer) with the Workman’s Compensation Commissioner, the Commissioner may (or may not) summon the dependants of the concerned employee, to appear before him under sub-section (4) of Section 8 aforesaid. Having satisfied himself about the entitlement (or otherwise) of the dependants to such compensation, the Commissioner is then required to order the rightful apportionment thereof amongst the dependants, under sub-sections (5) to (9) of Section 8 of the Workmen’s Compensation Act, 1923. Surplus, if any, has to be returned to the employer.

10. As against the aforesaid, where an employer has not suo-motu initiated action for payment of compensation to an employee or his/her dependants, inspite of an employee having suffered injuries leading to the death, it is open to the dependants of such employee, to raise a claim for compensation under Section 10 of the

Workmen's Compensation Act, 1923. Sub-section (1) of Section 10 prescribes the period of limitation for making such a claim as two years, from the date of occurrence (or death). The remaining sub-sections of Section 10 of the Workmen's Compensation Act, 1923 delineate the other procedural requirements for raising such a claim.

11. Having perused the aforesaid provisions and determined their effect, it clearly emerges, that the Port Trust had initiated proceedings for paying compensation to the dependants of the deceased Yalgurdappa B. Goudar "suo motu" under Section 8 of the Workmen's Compensation Act, 1923. For the aforesaid purpose, the Port Trust had deposited a sum of Rs.3,26,140/- with the Workmen's Compensation Commissioner on 4.11.2003. Thereupon, the Workmen's Compensation Commissioner, having issued notice to the claimants (dependants of the deceased Yalgurdappa B. Goudar), fixed 20.4.2004 as the date of hearing. On the aforesaid date, the statement of the widow of Yalgurdappa B. Goudar, namely, Dyamavva Yalgurdappa was recorded, and thereafter, the Workmen's Compensation Commissioner by an order dated 29.4.2004 directed the release of a sum of Rs.3,26,140/- to be shared by the widow of the deceased and his daughter in definite proportions.

12. The issue to be determined by us is, whether the acceptance of the aforesaid compensation would amount to the claimants having exercised their option, to seek compensation under the Workmen's Compensation Act, 1923. The procedure under Section 8 aforesaid (as noticed above) is initiated at the behest of the employer "suo motu", and as such, in our view cannot be considered as an exercise of option by the dependants/claimants to seek compensation under the provisions of the Workmen's Compensation Act, 1923. The position would have been otherwise, if the dependants had raised a claim for compensation under Section 10 of the Workmen's Compensation Act, 1923. In the said eventuality, certainly compensation would be paid to the dependants at the instance (and option) of the claimants. In other words, if the claimants had moved an application under Section 10 of the Workmen's Compensation Act, 1923, they would have been deemed to have exercised their option to seek compensation under the provisions of the Workmen's compensation Act. Suffice it to state that no such application was ever filed by the respondents-claimants herein under Section 10 aforesaid. In the above view of the matter, it can be stated that the respondents- claimants having never exercised their option to seek compensation under Section 10 of the Workmen's Compensation Act, 1923, could not be deemed to be precluded from seeking compensation under Section 166 of the Motor Vehicles Act, 1988.

13. Even though the aforesaid determination, concludes the issue in hand, ambiguity if at all, can also be resolved in the present case, on the basis of the admitted factual position. The first act at the behest of the respondents-claimants for seeking compensation on account of the death of Yalgurdappa B. Goudar, was by way of filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 on 30.5.2003. The aforesaid claim petition was the first claim for compensation raised at the hands of the respondents-claimants. If the question raised by the appellant has to be determined with reference to Section 167 of the Motor Vehicles Act, 1988, the same is liable to be determined on the basis of the aforesaid claim application filed by the respondents-claimants on 30.5.2003. The compensation deposited by the Port Trust with the Workmen's Compensation Commissioner for payment to the respondents-claimants was much later, on 4.11.2003. The aforesaid deposit, as already noticed above, was not at the behest of the respondents-claimants, but was based on a unilateral "suo motu" determination of the employer (the Port Trust) under Section 8 of the Workmen's Compensation Act, 1923. The first participation of Dayamavva Yalgurdappa, in the proceedings initiated by the Port Trust under the Workmen's Compensation Act, 1923, was on 20.4.2004. Having been summoned by the Workmen's Commissioner, she got her statement recorded before the Commissioner on 20.4.2004. But well before that date, she (as well as the other claimants) had already filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, on 30.5.2003. Filing of the aforesaid claim application under Section 166 aforesaid, in our view constitutes her (as well as, that of the other dependants of the deceased) option, to seek compensation under the Motor Vehicles Act, 1988. The instant conclusion would yet again answer the question raised by the appellant herein, under Section 167 of the Motor Vehicles Act, 1988, in the same manner, as has already been determined above.

14. In the aforesaid view of the matter, we hereby affirm the determination rendered by the Motor Accidents Claims Tribunal, Bagalkot, and the High Court in awarding compensation quantified at Rs.11,44,440/- to the claimant. The Motor Accidents Claims Tribunal, Bagalkot, as also, the High Court, ordered a deduction therefrom of a sum of Rs.3,26,140/- (paid to the claimants under the Workmen's Compensation Act, 1923). The said deduction gives full effect to Section 167 of the Motor Vehicles Act, 1988, inasmuch as, it awards compensation to the respondents-claimants under the enactment based on the option first exercised, and also ensures that, the respondents-claimants are not allowed dual benefit under the two enactments.

15. For the reasons recorded hereinabove, we find no merit in the instant appeal. The judgment rendered by the High Court is affirmed. The instant appeal is accordingly dismissed.