

## HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.422 of 2011

Judgment:

The appellants / respondents aggrieved by the award and decree dated:11.06.2010 passed in O.P. No.994 of 2008 of the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad, awarding compensation of Rs.7,31,000/- to the petitioner Nos.1 and 4 against the respondent Nos.1 and 2 jointly and severally with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of realization and further ordered to adjust Rs.2,85,360/- paid by the appellants under Workmen's Compensation Act and shall pay Rs.4,45,640/- and directed the appellants/respondents 1 and 2 to repay the amount within thirty days from the date of the order and further ordered the amount apportioned among the petitioner No.1 as Rs.3,00,000/- and petitioner No.4 as Rs.1,45,640/- respectively, the petitioner No.1 was permitted to withdraw Rs.1,50,000/- with proportionate costs soon after the deposit is made and the remaining amount of Rs.1,50,000/- shall be kept in any nationalized bank in a fixed deposit for a period of three years, preferred this Appeal.

2. The contention of the appellants is that the Tribunal has no jurisdiction to entertain the claim petition and further as the claimants have moved before the Workmen's Compensation authorities and received the amount and therefore, the claim is barred. It is further contended that the Trial Court did not consider Ex.B1 and the evidence of RW.1 prospectively.

3. The claim of the petitioners / claimants in brief is that, on 28.9.2008 at 6.15am., while the deceased was returning from garage fit side by walk, meanwhile, Ch. Lingeshwar Rao drove the bus bearing No.AP-28/Z-2231 in rash and negligent manner and dashed the deceased, as a result, he fell down, sustained head injury and died on the spot.

The deceased-Kamle Babru was 53 years old, working as driver in ARSRTC, Nizamabad Depot-I and was earning Rs.11,705/- per month. Due to his death, petitioner No.1 lost her affectionate husband and petitioner Nos.2 to 4 lost their affectionate father.

4. The contention of the appellants, by way of written statement is that the accident was not due to rash and negligent driving of the bus bearing No.AP-28/Z-2231. As a matter of fact, the deceased was not 53 years and was not earning Rs.11,705/- per month as driver. The amount claimed is excessive and without any basis.

5. Basing on the pleadings of both sides, the following issues are settled for trial:

- 1). Whether the accident has taken place due to rash and negligent driving of APSRTC bus bearing No.AP-28/Z-2231 by its driver?
- 2). Whether the petitioners are entitled for compensation? If so to what just amount and against whom?
- 3). To what relief?

6. In support of their claim, PWs.1 and 2 were examined as witnesses and Exs.1 to 6 were marked and on behalf of respondents, RW.1 was examined and Exs.B1 to B.16 were marked.

7. Now, the point that arises for determination is:

Whether the award and decree suffer from legal infirmities warranting interference in the Appeal?

8. The main contention of the appellants/respondents is that the petitioners/ claimants have already received the compensation under Workmen's Compensation Act, 1923 and therefore, the claim petition is not maintainable. Though in the written statement, it is contended that there is no negligence on the part of the driver of the RTC bus, in the appeal, they have not taken such plea. The wife of the deceased- K. Babru who is petitioner No.1 filed evidence affidavit. The averments, complaint and also FIR under Ex.A1 and charge sheet under Ex.A2 read with evidence of PW.1 established that the deceased was entrusted with duty and the same was informed to the conductor and while he was returning, the accident occurred. PW.2 is the eye witness to the accident whose clear evidence is that on 28.9.2008 at 6.15 a.m., the deceased was entrusted with duty and he intimated to his conductor while return from garage fit side by walk. The driver of the RTC bus drove in rash and negligent manner and dashed the deceased, as a result of which, he fell down and received head injury and died on the spot.

9. There is no dispute with regard to the accident and death. The same was asserted in Ex.A1-FIR and also the investigating officer after thorough investigation filed Ex.A2-charge sheet stating that the accident occurred due to rash and negligent driving of the respondents. Ex.A3 is also filed which makes it very clear that the accident in question occurred due to rash and negligent driving of the

driver of the respondents. Therefore, Exs.A1, A2 and A3 are against the driver of the RTC bus bearing No.AP-28/Z-2231.

10. In view of the above circumstances, the Tribunal having considered corroborative evidence of PWs.1 and 2 and considering the documentary evidence under Exs.A1, A2, A3 and A5 came to conclusion that the accident was due to rash and negligent driving of the RTC bus bearing No.AP-28/Z-2231.

The main contention of the appellants is that the petitioners/ claimants having accepted the compensation under Workmen's Compensation Act, 1923 could not have filed the claim petition under Motor Vehicles Act, 1988 and ought not to have entertained the same.

11. *Per Contra*, the petitioners/ claimants contention is that the compensation received under section 8 of Workmen's Compensation Act, does not debar them from exercising option and seeking compensation under Motor Vehicles Act. In support of their contention, they have relied upon the decision in the case of ORIENTAL INSURANCE COMPANY LIMITED v. DYAMAVVA AND OTHERS<sup>1</sup> wherein the Apex Court held that the respondent claimants having never exercised their option to seek compensation under section 10 of WC Act, could not be deemed to be precluded from seeking compensation under MV Act, 1988. Hence, the award of compensation passed under the MV Act, 1988 after deducting the amount already released under the WC Act, 1923, is proper. It gives full effect to Section 167 of the MV Act, 1988, in as much as, it awards compensation to the respondent claimants under the enactment based

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<sup>1</sup> (2013) 9 Supreme Court Cases 406

on the option first exercised, and also ensures that the respondent claimants are not allowed dual benefit under the two enactments.

12. In the instant case, K. Jani Reddy, Depot Manager, APSRTC, Nizamabad-I Depot, was examined as RW.1 and his clinching evidence is that PW.1-wife namely K. Kasturi Bai, after the death of her husband-Babru with Employee No.334315-Driver of APSRTC at Nizamabad, made an application on 23.10.2008 to the Depot Manager for settlement of compensation under Workmen's Compensation Act enclosing no objection affidavit of her three sons under Ex.B2 where under, sons of the deceased and PW.1 stated that they have no objection to sanction the amount in the name of their mother-PW.1. In pursuance of the said application, the appellants calculated the amount taking into consideration all relevant factors, such as age, salary etc., as per Workmen's Compensation Act, and arrived at Rs.2,85,360/- and the same was sent through a cheque bearing No.721290, dated:12-11-2008 for Rs.2,85,360/-, drawn in the name of the Commissioner, Workmen's Compensation, Ranga Reddy zone, through letter dated:18-11-2008. It is also the evidence of RW.1 that the Commissioner for Workmen's Compensation, Ranga Reddy zone has also sent to the Assistant Commissioner of Labour, Nizamabad, to disburse the same to the dependants of the deceased after making enquiry and the same was also disbursed to PW.1 by way of cheque in her name for Rs.1,85,360/- and remaining amount Rs.1,00,000/- was kept in FDR, Andhra Bank. So, the disbursement of the amount were proved by Exs.B3 to B.16. But PW.1 denied the same. The evidence of RW.1 supported by Exs.B1 to B.16 established that the APSRTC-appellants assessed the compensation under Workmen's Compensation Act and paid to the claimants after obtaining due acknowledgements.



13. It is evident from the evidence of RW.1, Exs.B1 to B.16 and also the evidence of PW.1 besides the compensation determined under Workmen's Compensation Act, 1923, the petitioners/claimants made a claim of Rs.8.00 lakhs along with interest of 24% from the date of filing till the date of realization under section 166 of Motor Vehicles Act, 1988. So, the Tribunal independently determined and passed the award dated:11.6.2010 in M.V.O.P.No.994 of 2008 and the petitioners/ claimants were awarded compensation after considering and deducting the amounts paid by the department under Workmen's Compensation Act.

14. The vehement contention of the learned Counsel for the appellants is that the claimants had been awarded compensation under Workmen's Compensation Act, 1923, and as such they were precluded from raising a claim seeking compensation under the Motor Vehicles Act, 1988. The option was available to the claimants to seek compensation either under Workmen's Compensation Act, 1923 or the Motor Vehicles Act, 1988. PW.1 after the accident, made a representation under Ex.B.1 for settlement of compensation under Workmen's Compensation Act. She has not filed an application either under section 8 or 10 of the M.V. 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.

15. The petitioners/claimants herein have not made any application before the Commissioner for Workmen's Compensation. The application is made to the employer-appellants herein. Therefore, Ex.B1 under any circumstances, can be considered the claim contemplated under section 10 of Workmen's Compensation Act. The appellants deposited the compensation payable with Workmen's Compensation Commissioner as required under section 8 of the Workmen's Compensation Act and paid the amount directly after

taking Ex.B2 affidavit from the other dependants. Therefore, payment made by the appellants directly to the dependants is not recognised as valid disbursement of the compensation.

16. 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 Workmen'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.

17. The Commissioner for Workmen's Compensation issued a cheque which was sent to the PW.1 under Ex.B5 dated:23.4.2009 for an amount of Rs.1,85,360/-. PW.1 acknowledged the same, under Ex.B6-acknowledgment. The balance of Rs.1.00 lakh was kept in FDR-Kalpataruvu deposit in Andhra Bank as per Ex.B.7. PW.1 also acknowledged cheque for an amount of Rs.76,362/-, under Ex.B.9 and also cheque for an amount of Rs.73,502/- towards amount of leave encashment under receipt Ex.B10, dated:29.10.2008, of Rs.2,13,137.00 by way of cheque dated:14.11.2008 towards provident fund amount under Ex.B11 acknowledgement. The Depot Manager,



R.T.C., Nizamabad, acknowledged under Ex.B12 cheque for Rs.1,16,121.00, issued in favour of PW.1 was disbursed. An amount of Rs.66,720/- was paid to PW.1 by way of A/c payee under Ex.B13, dated:6.11.2000. Under Ex.B.14, cheque for Rs.1.00 lakh dated:01.4.2009 under Janata Personal Accident Scheme benefit was delivered to PW.1. PW.1 also acknowledged receipt of 1.00 lakh towards additional monetary benefits in view of employment of her husband. Under Ex.B16, PW.1 was informed that the outstanding balance of Rs.1,50,000 was due to the APSRTC Employees' Thrift & Credit Co-operative Society Limited was returned off. Therefore, the evidence of RW.1 supported by Exs.B1 to B16 established payment of compensation under Workmen's Compensation and also other death benefits besides the amount outstanding due by the deceased to the Employees' Thrift & Credit Co-operative Society Limited.

18. In view of the above circumstances, I am of the considered view that the procedure under section 8 of the Workmen's Compensation Act initiated by the appellants at the behest of their employer basing on Ex.B1 representation, cannot be considered as an exercise of option by the dependents / claimants to seek compensation under the provisions of the Workmen's Compensation Act, 1923. Further, the clearance of all the benefits and also settlement under Workmen's Compensation Act by the employer is obligated on the employer/appellants. The position would have been otherwise, if the dependants raised 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 the 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 Workmen's Compensation Act. Suffice it to state that, no such application was never filed by the claimants under section 10 of the Workmen's Compensation Act, 1923.

19. In view of the above facts and circumstances, it can be stated that the respondent 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 166 of the Motor Vehicles Act, 1988. The first act, at the behest of the claimants for seeking compensation on account of death of K. Babru was by way of filing claim petition under section 166 of the Motor Vehicles Act, 1988. The aforesaid MVO.P. No.994 of 2008 filed on 13.11.2008 is the first claim for compensation raised by the claimants. The Tribunal rightly considered the amount paid by the appellants under Workmen's Compensation Act, 1923 and the same is deducted out of the compensation which the claimants are entitled to compensation of Rs.2,85,360/- and awarded compensation of Rs.4,45,640/- with interest at 7.5% from the date of petition till the date of realization, jointly and severally against the respondents 1 and 2. The said compensation was awarded taking into consideration the age of the deceased as 53 years applied Multiplier-11 and his salary at Rs.8,000/- per month, basing on the salary certificate under Ex.Ex.A6. In the aforesaid view of the matter, I hereby affirm the decision rendered by the claims Tribunal in awarding compensation of quantum of Rs.7,31,000/- to the claimants. The Tribunal also deducted an amount of Rs.2,85,360/- which the appellants paid under Workmen's

Compensation Act, 1923 to the claimants and awarded Rs.4,45,640/- .  
The said deduction gives full effect to section 167 of the M.V. Act, 1988.

20. Hence, for the reasons recorded herein above, I find no merit in the appeal. The award and decree of the Tribunal dated:11.06.2010 passed in M.V.O.P. No.994 of 2008 of the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad, is affirmed. The appeal is dismissed with costs.

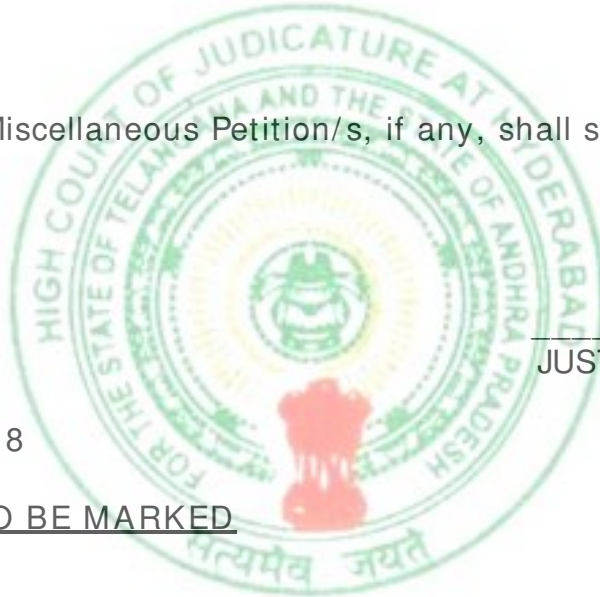
21. Advocate fee of Rs.2,000/- is fixed.

22. Pending Miscellaneous Petition/s, if any, shall stand closed.

Dated:31-7-2018

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