

Before J. V. Gupta, J.

TRADING ENGINEERING,—Petitioner

versus

NIRMLA DEVI and another,—Respondents.

Civil Revision No. 2757 of 1979

February 5, 1980.

Motor Vehicles Act (IV of 1939)—Section 110-AA—Workmen's Compensation Act (VIII of 1923)—Section 3(5)—Compensation awarded to the heirs of a deceased employee under the Motor Vehicles Act—Claim preferred by the heirs under the Workmen's Compensation Act as well—Such claim—Whether can be entertained.

Held, that a person entitled to compensation under the Motor Vehicles Act and the Workmen's Compensation Act may claim such compensation under either of those Acts but not under both. Thus, the heirs of a deceased employee who have been awarded compensation under the Motor Vehicles Act cannot prefer a claim for compensation under the Workmen's Compensation Act. (Para 3)

Petition under section 115 C.P.C. for revision of the order of the Court of Shri S. L. Sharma, Commissioner under Workmen's Compensation Act for Gurgaon Area, dated 14th September, 1979, deciding the issues No. 1, 3 and 5 in favour of the applicant and further directing them to appear before him on 27th September, 1979, for evidence on issue No. 2 and 4.

Claim :—For Rs. 20,000 under Workmens' Compensation Act.

Claim in Revision:—For reversal of the order of Lower Court.

S. S. Mahajan, Advocate, for the Petitioner.

Ashok Aggarwal, Advocate, for the Respondents.

JUDGMENT

J. V. Gupta, J.

(1) This is a petition under Article 227 of the Constitution of India, against the order of the Commissioner under Workmen's Compensation Act, dated 14th September, 1979.

(2) One Shri Ram Chander, workman, resident of Sohna, district Gurgaon, died in an accident on 6th January, 1976. His widow, Shrimati Nirmala Devi, respondent, filed an application under the Workmen's Compensation Act, 1923, on 13th November, 1978, claiming death compensation of her husband. Along with that application, an application for condonation of delay under section 5 of the Indian Limitation Act, was also filed. In the written statement filed on behalf of the employer, an objection was taken that the application was not maintainable, as the widow has already received Rs. 10,000 under the Motor Vehicles Act, 1939, as she had applied for compensation along with the parents of her deceased husband in the Court of the Motor Accident Claims Tribunal, Gurgaon, and she was awarded Rs. 10,000. It was also stressed that the application is time-barred and also barred under section 110-AA of the Motor Vehicles Act, 1939. On the pleadings of the parties, the learned Commissioner framed the following issues:—

- (1) Whether the present application is maintainable in view of section 110-AA of the Motor Vehicles Act, 1939, and section 3(5) of the Workmen's Compensation Act, 1923 ?
- (2) Whether the accident arose out of and during the course of employment?
- (3) Whether the claim application is barred by the limitation?
- (4) Relief.
- (5) Whether the present application is barred by the *res judicata*?

Issues Nos. 1, 3 and 5 were treated as preliminary. In the present petition, the main contest is on issue No. 1. The learned Commissioner decided this issue in favour of the claimant. The view taken by him is that she was awarded Rs. 10,000 by the Motor Accident Claims Tribunal; whereas under the Workmen's Compensation Act, she is entitled to Rs. 18,000, and hence her claim for Rs. 10,000 can be deducted, which, according to him, is barred by section 110-AA of the Motor Vehicles Act.

(3) In order to appreciate the contention of the learned counsel for the petitioner, reproduction of section 110-AA of the Motor Vehicles Act is necessary. It reads thus:—

“Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923), where the death of

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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 claim such compensation under either of those Acts but not under both".

From the language of this section, it is quite clear that a person entitled to compensation under both the Acts may claim such compensation under either of those Acts, but not under both. In support of this, a judgment of the Himachal Pradesh High Court, reported as *Smt. Gayatri Devi v. Tani Ram and others* (1), may be referred to. In para 9 thereof, it has been observed, that:—

"Therefore, the position now was that a claim for compensation can be made either under the Workmen's Compensation Act or under the Motor Vehicles Act. The difference between the nature and legal incidents of a claim under the Workmen's Compensation Act and a claim made in a common law suit continues to be reflected between a claim made under the Workmen's Compensation Act and a claim made under the Motor Vehicles Act. The basis of the two claims differ from each other, and therefore, until 1970 it was possible to obtain relief on both claims. It may be observed that while section 3(5) of the Workmen's Compensation Act compels a workman to choose between a common law suit and a proceeding under that Act, a corresponding restriction was wanting in respect of a claim under the Motor Vehicles Act and a claim under the Workmen's Compensation Act. In order to allow a claim only under one of the two Acts, the Motor Vehicles (Amendment) Act, 1969 inserted section 110-AA in the Motor Vehicles Act. The section provides:

... ..

The amendment came into effect on March 2, 1970. With effect from that date a person entitled to compensation can make a claim either under the Workmen's Compensation Act or under the Motor Vehicles Act. He

(1) A.I.R. 1976 H.P. 75.

cannot claim compensation under both Acts and thus obtain compensation twice over".

(4) The learned counsel for the respondents was unable to support the order of the learned Commissioner. He, however, referred to section 2(c) of the Workmen's Compensation Act, 1923, wherein the term "compensation" has been defined. Reference was also made in section 5 thereof, which deals with the amount of compensation to be awarded under the Act. However, I do not find any relevancy of these provisions for deciding the controversy between the parties in this petition.

(5) For the reasons recorded above, this petition succeeds and the order of the Commissioner is hereby quashed. However, there will be no order as to costs.

S.C.K.

Before R. N. Mittal, J.

TALWAR SPINNERS and another,—Petitioners

versus

VEENA TANDON,—Respondent.

Civil Revision No. 2051 of 1979.

February 20, 1980.

Code of Civil Procedure (V of 1908)—Order 37 Rule 3 Clauses 5 and 6—Finding recorded by the trial Court that there are triable issues and the defence is substantial—Defendant allowed to defend the suit without imposition of terms—Later defence found not to be so—Imposition of terms—Whether permissible—Circumstances when conditions can be imposed—Stated.

Held, that it has been provided in clause 5 of Rule 3 of Order 37 of the Code of Civil Procedure, 1908, that leave to defend a suit shall be granted to the defendant unconditionally or upon such terms as may appear to the Court to be just. The intention of the Legislature thus, is clear that it wanted to give wider powers to the Courts regarding furnishing the securities while granting the defendant permission to defend. The principles governing the grant of permission to a defendant to defend a suit under Order 37 of the Code are three :