(2024:HHC:14477

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO No. 92 of 2024 a/w
FAOs No. 171 & 183/2024
Reserved on: 12.11.2024
Date of decision: 13.12.2024

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(1) FAO No. 92 of 2024

Tata AIG General Insurance Company Ltd.

…..Appellant.

Versus

Shibi Devi & Ors. ……Respondents.

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(2) FAO No. 171 of 2024

Shibi Devi …..Appellant.

Versus

Tata AIG General Insurance Company Ltd. & Ors.

Respondents.

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(3) FAO No. 183 of 2024

Ramesh Kumar …..Appellant.

Versus

Shibi Devi & Ors. Respondents.

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The Hon'ble Mr. Justice Sushil Kukreja, Judge.

[1] *Whether approved for reporting?* ***Yes****.*

For the appellant(s): Mr. Jagdish Thakur, Advocate, for the appellant/Insurance Company in FAO No. 92/2024.

Mr. Rajat Kumar, Advocate, for

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[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

the appellant in FAO No. 171/2024.

None for the appellant in FAO No. 183/2024.

For the respondent(s): Mr. Rajat Kumar, Advocate, for respondents No. 1 & 2 in FAO No. 92/2024.

None for respondent No. 3.

Mr. Jagdish Thakur, Advocate, for respondent No. 1 in FAO No. 171/2024 and for respondent No. 3 in FAO No. 183/2024.

Respondents No. 4 & 5 in FAOs No. 92 and 183/2024 are ex parte.

Respondents No. 2 to in FAO No. 171/2024 are ex parte.

Sushil Kukreja, Judge.

Since all the appeals arise out of a common award, they are heard together and are being disposed of by this common judgment.

2. The present appeals have been filed by the appellant(s) against the impugned award dated 22.06.2023, passed by learned Commissioner, Employee's

Compensation Act, Theog, District Shimla, H.P., in Petition No. 7-2 of 2015.

3. Succinctly, the facts giving rise to the present appeal are that Sh. Raju was employed as driver with respondent No. 1 in a truck bearing Registration No. HP 62-1556. On 03.10.2013, when he was coming from Chandigarh to Theog in the aforesaid truck, which was loaded with bricks, suddenly the truck rolled down near Housing Board Colony, Theog. In the said accident, Raju sustained injuries on his person and as such, he was taken to Civil Hospital, Theog, wherefrom, he was referred to PGI, Chandigarh. However, on the way to Chandigarh ,he died at Solan. Post mortem of the deceased was conducted by the Medical Officers at Solan, vide post mortem No. 55/13, dated 04.10.2013 and FIR No. 135, dated 03.10.2013 was lodged at Police Station, Theog. At the time of accident, deceased was about 43 years of age and was the only earning member of the family. Consequently, his mother, who was totally dependent upon him had filed the instant claim petition.

4. Respondent No. 1 owner of the vehicle in question contested the petition by filing reply, wherein, it has been averred that the deceased was driving the vehicle in question on the relevant date, time and place and was having a valid driving licence at the time of accident. It has further been averred that he died during the course of employment and his monthly salary was Rs. 6,000/- per month and in addition to that, he was also getting a diet money of Rs. 50/- per day.

5. Respondent No. 2 Insurance Company also contested the petition by filing reply and on merits, it has been averred that the matter has been compromised as per claim petition No. 2-2 of 2014 and full and final amount arising out of the death of the deceased has been assessed and settled. It has been denied that the petitioner was dependent upon the deceased. It has been averred that entire amount of compensation as per the Act has been deposited before the learned Workmen’s Compensation Commissioner, therefore, if at all, the petitioner is entitled to

any amount arising out of the death of the deceased, the same can be recovered by her from the other legal representatives of the deceased as the matter has been compromised vide claim petition No. 2-2 of 2014.

6. Respondents No. 3 and 4 have also contested the petition by filing reply, wherein, it has been averred that they have already received compensation amount from the Insurance Company, being wife and daughter of the deceased. It has also been averred that they have neither claimed nor have received any amount with respect to the share of petitioner, Shibi Devi. They also averred that copy of Parivar Register was placed on record in claim petition No. 2-2 of 2014, wherein, name of Shibi Devi was mentioned, however, the Insurance Company settled the claim with them on the first date of hearing for a sum of Rs. 7,20,000/-.

7. By filing rejoinder(s) the contents of the reply(ies) were denied and that of the petition were reiterated.

8. On 03.03.2016, learned Commissioner below framed the following issues:-

"1. Whether the petitioner was the dependent upon deceased Raju and hence, she is entitled for compensation amount, as claimed by her?OPA

2. Whether the present petition is not maintainable, as alleged?OPR-2

3. Whether the petitioner has no cause of action to file the present petition, as alleged?OPR-2

4. Whether the petition is bad for non-joinder of necessary parties, as alleged?OPR-2

5. Relief."

After deciding issue No. 1 in affirmative and issues No. 2 to 4 in negative, the petition was partly allowed and respondent No. 2 was held liable to pay compensation amount i.e. Rs. 2,34,053/- to petitioner No. 1, Shibi Devi alongwith interest @ 12% per annum w.e.f. 03.10.2013 till realization of the same. Further, respondent No. 1, being the employer was also held liable to pay the penalty equivalent to 15% of the compensation amount i.e. Rs. 1,05,324 to petitioner No. 1, Shibi Devi.

9. Feeling aggrieved, the appellant(s) preferred the instant appeals against the impugned award.

10. Learned counsel for the Insurance Company as well learned counsel for the owner/employer contended that the present petition filed by the parents of the deceased is not maintainable, as only one claim is maintainable in respect of one cause of action and in the present case, the parents of the deceased had filed a separate claim petition under Section 22 of the Employee's Compensation Act despite the fact that widow of the deceased as well as his daughter i.e. proforma respondents No. 4 and 5 had already filed a claim petition before the learned Commissioner, Employee's Compensation Act at Theog, District Shimla, H.P., in which, the matter was compromised between the parties and a sum of Rs. 7,20,000/- was awarded as compensation to them in pursuance to compromise order/award dated 23.06.2015, passed by the learned Commissioner below.

11. On the other hand, learned counsel for the appellant, i.e. the mother of the deceased in FAO No. 171 of

2024, contended that she was totally dependent upon the earnings of the deceased and she had neither claimed nor received any amount with respect to the compensation awarded vide award dated 23.06.2015. He also contended that copy of the family register was placed on record in the said petition, wherein, name of Shibi Devi was there, however, the Insurance Company had settled the claim with respondents No. 3 and 4, i.e. Shanti Devi and Kumari Anjali without verifying the persons who were the dependents upon the deceased at the time of his death and such compromise is not binding upon appellant Shibi Devi.

12. I have heard the learned counsel for the appellant(s), learned counsel for the respondent(s) and carefully examined the entire record.

13. The impugned award has been separately challenged by the insurance company being FAO No. 92 of 2024 and by the owner/employer being FAO No. 183 of 2024 on the ground that the subsequent claim petition filed by the parents of the deceased is not maintainable as the

award passed in the claim petition which was filed earlier by the respondents No. 4 and 5, i.e. widow and daughter of the deceased, has attained finality. The impugned award has also been challenged by the mother of the deceased namely Shibi Devi for enhancement of compensation amount, as awarded to her by filing a separate appeal being FAO No. 171 of 2024 .

14. It is not in dispute that Shanta widow of the deceased and her minor daughter had preferred a claim petition under Section 22 clause (1) and (2) of the Employee's Compensation Act seeking compensation on account of death of the deceased, who was alleged to be driver of truck bearing registration No. HP-62-1556. The said petition was filed before the learned Employees Compensation Commissioner, Theog and was registered as Claim Petition No. 2-2 of 2014, titled Smt. Shanta & Anr. Vs. Ramesh Kumar & Anr. The said petition was filed on 11.04.2014 and the same was compromised between the parties on 23.06.2015 before the learned Employees Compensation Commissioner, Theog. The matter

was settled at an amount of Rs. 7,20,000/- in full and final settlement of the claim on account of the death of the deceased Raju arising out of the accident involving vehicle bearing registration No. HP-62-1556, which met with an accident on 03.10.2013. The said amount to the tune of Rs. 7,20,000/- was accordingly deposited by the insurance company before Commissioner below, in pursuance to the compromise arrived at between the parties on 23.06.2015.

15. It is also not in dispute that after passing of the compromise award, dated 23.06.2015, the parents of the deceased, namely Shibi Devi and Chimna Ram have filed a separate petition under Section 22 Clause (1) & (2) of the Employee's Compensation Amended Act, 1923 before the Court of learned Commissioner, Employees Compensation Act, Theog, H.P. claiming compensation on account of death of their deceased son Raju and the said petition was allowed in favour of the mother of the deceased vide impugned award dated 22.06.2023.

16. Now the question which arises for consideration

before this Court is as to weather the subsequent petition filed by the parents of the deceased claiming compensation on account of death of the their deceased son Raju is maintainable, particularly in view of the fact that the claim petition filed by the widow and daughter of the deceased had already been allowed vide award dated 23.06.2015 passed by the learned Commissioner below. To meet the contentions of learned counsel for the Insurance Company as well as learned counsel for the owner/employer, it would be necessary to refer to Section 22 of the Employee's Compensation Act, 1923, which reads as under:-

> *"22. Form of application.— (1) Where an accident occurs in respect of which liability to pay compensation under this Act arises, a claim for such compensation may, subject to the provisions of this Act, be made before the Commissioner.*
> *(1A) Subject to the provisions of sub-section (1), no application for the settlement of any matter by Commissioner, other than an application by a dependant or dependants for compensation, shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.*
> *(2) An application to a Commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain, in addition to*

any particulars which may be prescribed, the following particulars namely:--

(a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims;

(b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission;

(c) the names and addresses of the parties; and

(d) except in the case of an application by dependants for compensation a concise statement of the matters on which agreement has and 4[of] those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner."

17. The word "dependent" has been defined under Section 2(d) of the Employee's Compensation Act, which reads as under:-

"……..

2(d) "dependent" means compensation as provided for by this Act; [employee] namely:-

(i) a widow, a minor [legitimate or adopted] son, an unmarried [legitimate or adopted] daughter or a widowed mother; and

……..."

18. It is settled that Section 167 of Motor Vehicles Act

gives option to claimants to elect the forum where death of any person might give rise to claim for compensation under MV Act and also under Workmen Compensation Act 1923. In the opinion of this Court, any application claiming compensation, either under the Motor Vehicles Act or under the Employee's Compensation Act where death has resulted from the accident, even if preferred by one of the legal representatives/dependents is on behalf of all the legal representatives/dependents of the deceased. At this stage, it is necessary to look into the relevant provisions of the Motor Vehicles Act, 1988 under Sections 166 and 167 of the Act. They are extracted as under for better appreciation:-

> *"166. Application for compensation : (1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made:*
> *(a) by the person who has sustained the injury; or*
> *(b) by the owner of the property; or*
> *(c) where death has resulted from me accident, by all or any of the legal representatives of the deceased; or*
> *(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be:*
>
> *Provided that whether all the legal representatives of the deceased have not jointed in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so*

joined, shall be impleaded as respondents to the application.

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.

24. From a reading of Section 166(1)(c) it is clear that where the death has resulted from the accident, the application for compensation can be filed by all or any of the legal representatives of the deceased and as per the proviso to the said sub-clause, if all the legal representatives of the deceased have not joined in any such application for compensation, application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. Further Section 167 contemplates that if the death of or bodily injury to any person gives raise to a claim for compensation both under the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1923 (8 of 1923), the persons entitled to compensation, can file claim petitions under either of those two Acts, but they cannot file claim petitions under both the enactments. Similarly Rules 476 and 476(A) of the Andhra Pradesh Motor Vehicles Rules, 1989 also contemplates that for one cause of action only one claim petition is maintainable and under the said rules, procedure for filing claim applications is prescribed. From a reading of Sections 166(1)(c), 167 and Rules 476 and 476-A it is clear that only one claim petition is maintainable for one cause of action and the claim petition can be filed by all or any of the legal representatives of the deceased and if all the legal representatives of the deceased have not been impleaded, an application in that behalf shall be filed for the benefit of all the representatives of the deceased and accordingly they shall be impleaded as respondents to

the claim application"

19. The proviso to Section 166 (1) of the Motor Vehicles Act lays down that when the death has resulted from the accident, an application for compensation may be made by all or any of the legal representatives of the deceased. It further makes it clear that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. The cause of action for claiming compensation arises only out of single accident and all the legal representatives/dependents together are entitled for payment of compensation arising out of the said accident. The compensation awarded either under the Motor Vehicles Act or under the Employee's Compensation Act represents the compensation payable to and for the benefit of all the legal representatives of the deceased.

20. However, as observed earlier, the mother of the

deceased neither filed any application seeking her impleadment nor she was impleaded as respondent when the claim petition filed by the widow and daughter of the deceased was being considered. The mother of the deceased also did not lay any challenge to the award dated 23.06.2015 passed by leaned Commissioner, Theog in favour of respondents No. 3 and 4, i.e. the widow and daughter of the deceased before any Court of law. Thus, this Court cannot interfere with the award dated 23.06.2015 passed by learned Commissioner in favour of respondents No. 4 and 5, i.e. the widow and daughter of deceased Raju, since the same is not under challenge before this Court.

21. As observed earlier, only one claim petition is maintainable in respect of one cause of action and all the dependents/legal representatives of the deceased have to get impleaded in the said petition and each one cannot file separate application. Therefore, the subsequent petition filed by the parents of the deceased is not maintainable and the impugned award passed in favour of the mother of the

deceased Shibi Devi deserves to be quashed.

22. Consequently, as a sequel to my aforesaid discussion, the appeal filed by the Insurance Company being FAO No. 92 of 2024 and the appeal filed by the owner/employer FAO No. 183 of 2024 are allowed and the impugned award dated 22.06.2023, passed by learned Commissioner, Employee's Compensation Act, Theog, District Shimla, H.P., in Petition No. 7-2 of 2015 is quashed and set aside. The appeal filed by the mother of the deceased Smt. Shibi Devi being FAO No. 171 of 2024, is dismissed with liberty reserved to her to seek redressal of her grievance by taking recourse to appropriate remedy as available to her in accordance with law.

(Sushil Kukreja)
Judge

December 13, 2024
(raman)