APPELLATE CIVIL

Mr. Justice K.T. Thomas and
Mr. Justice N. Dhinakar

1994 December 19

NEW INDIA ASSURANCE Co. LTD. } Appellant

v.

PENNAMMA KURIAN and others } Respondent

Workmen's Compensation Act, 1923 (Central Act viii of 1923) Claim for compensation for injuries sustained by worker in motor accident—Compensation can be claimed either under the Motor Vehicles Act or the Act and not under both—Section 110 AA of the Motor Vehicles Act, 1939.

Claim was made by the Legal heirs of one Kurian in respect of a motor accident which happened on 9th May 1988 while he was driving the Jeep KLW 3057. As he died in the accident claim for compensation was preferred by his legal heirs before the Motor Accidents Claim Tribunal. The claim was rejected on the ground that the accident was due to the negligence of the deceased. But an amount of Rs. 15,000 was ordered to be paid under "no fault liability". Thereafter the legal heirs at the deceased made a claim under the provisions of the Act. The Commissioner for Workmens Compensation fixed the amount at Rs. 77,856 as compensation payable by the employer of the deceased workmen. As the liability was covered by an Insurance policy the insurance Company was directed to pay the amount. The award is being challenged in the appeal by the Insurance Company. Dismissing the appeal,

Held: Section 110AA, even by a reading, conveys the message that one cannot have multiple or double advantage with the same cause of action. If a person has obtained a relief through the remedy provided in one of two statutes, he is debarred from availing himself of the remedy provided in the other statute. Dismissal of the application filed under one statute must be taken as the consequence of a finding that he has no valid claim to be

made under that Act. If no valid claim can be made, its corollary is that it was not a claim recognisable under law. If so, there is no bar in making a claim under the other statute.

We confirm the order of the Workmen's Compensation Commissioner subject to a rider that appellant insurance company can get credit of the amount paid to the claimants under "no fault liability".

Harivadan *v.* Chandrasinh A.I.R. 1983 Gujarat 69; United India Insurance Company Ltd. *v.* Padmavathy 1990 (1) K.L.T. 750—*Relied on*:

Appeal under section 30 of the Workmen's Compensation Act, 1923 against workmen's passed by the Commissioner for Workmen's Compensation, Kannur in W.C.C. No. 173/93.

Mr. Mathew Jacob .. for appellant

M/s Tomy Sabastian and *R. Ashok* } for respondents 1 to 4

JUDGMENT

The Judgment of the Court was delivered by Thomas, J.—The short question mooted in this appeal is this: Can a claim be made for compensation under the Workmen's Compensation Act, 1923 (for short 'W.C. Act') after dismissal of an application made before Motor Accidents Claims Tribunal (for short 'Claims Tribunal'). Appellant (M/s. New India Assurance Company Limited) contends that such a claim is not maintainable in law, Legality of the said contention requires consideration.

2. Facts: A claim was made by the legal heirs of one Kurien in respect of a motor (jeep) accident which happened on 9th May 1988 while the said Kurian was driving the jeep (KLW 3057). As he died in the accident, the claim was preferred by his legal heirs before the Claims Tribunal. But the claim was repelled on the ground that the accident happened due to the negligence

of the deceased Kurian. However, the Claims Tribunal had ordered a sum of Rs. 15,000 to be paid to the claimants under "no fault liability" as envisaged in Chapter VII A of the Motor Vehicles Act, 1939 (which corresponds to Chapter X of the Motor Vehicles Act, 1988)—(For short the former will, hereinafter, be referred to as the Old Motor Vehicles Act and the latter as the present Motor Vehicles Act).

3. Legal heirs of deceased Kurian then made a claim under the provisions of W.C. Act. The Workmen's Compensation Commissioner ('the Commissioner' for short) fixed a sum of Rs. 77,856 as compensation payable by the employer of the deceased Kurian to his legal heirs. As the liability was covered by an insurance policy, the Commissioner has directed the insurer to pay the amount. The said award of the Commissioner is now being challenged by the insurer in this appeal filed under section 30 of the W.C. Act.

4. The facts, that there was an accident involving jeep KLW 3057 on 9th May 1988 and that it was driven by the deceased Kurian and that the accident was covered by the insuranec policy for workmen's compensation claim, are not in dispute. The only point now raised, during arguments, is that the claimants are debarred from claiming compensation under the W.C. Act in view of section 110 AA of the Old M.V. Act since the same claimants have laid a claim earlier under the provisions of the M.V. Act, though the said claim was dismissed.

5. Section 110 AA of the Old Act is extracted below:

"Notwithstanding anything contained in the Workmen's Compensation Act, 1923, where the death 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 VII A, claim such compensation under either of those Acts but not under both."

(It is the same as section 167 of the new M. V. Act except that in the place of the words "without prejudice to the provisions of Chapter VII A" the corresponding provision in the new M.V. Act contains the words "without prejudice to the provisions of Chapter X". This is because Chapter VII A of the Old M.V. Act corresponds to Chaper X of the new M.V. Act).

6. Section 110 AA, even by a reading, conveys the message that one cannot have multiple or double advantage with the same cause of action. If a person has obtained a relief through the remedy provided in one or two statutes, he is debarred from availing himself of the remedy provided in the other statute. There can be no doubt on that proposition.

7. But if the person who filed the application under one Act is non-suited on any ground, can it be held that he too would be debarred from filing the application under the other Act. Dismissal of the application filed under one statute must be taken as the consequence of a finding that he has no valid claim to be made under that Act. If no valid claim can be made, its corollary is that it was not a claim recognisable under law. If so, there is no bar in making a claim under the other statute.

8. The said Principle can be discerned from the words employed in section 110 AA itself, "where death of or bodily injury of any person gives rise to a claim for compensation under this Act and also under W.C. Act". then only the claimant is debarred from making claims under both statutes as he is obliged to select only one of them. The bar would operate only if death or bodily injury to a person "gives rise to a claim" for compensation under both Acts. In other words, if death or bodily injury to a person does not give rise to a claim under any one of the Acts, there would be no bar in making a claim under the other Act even if he had made an unsuccessful move under the other Act earlier. Dismissal of an application under one of the Acts would tantamount to a finding that no legal claim arose under that Act.

9. A driver, who on account of his own negligence caused the accident, cannot get any valid claim for compensation under the M.V. Act (except under a claim of "no fault liability"). If that driver had died in the accident his legal heirs would not get any better claim under the Motor Vehicles Act.

10. But the position would be different under the W.C. Act in the case of death of the driver concerned. The employer is liable to pay compensation to his workman when he sustains personal injury by accident which arose out of and in the course of his employment. Section 3 of the W.C. Act created the liability in that domain. Of course, the conduct of the workman in relation to that accident may affect his entitlement to compensation in certain contingencies mentioned in the proviso to section 3. But the liability of the employer would remain unimpaired if the injured workman has succumbed to such personal injuries. Thus, under the W.C. Act when death is caused to the workman in such contingencies his legal heirs would become entitled to compensation whether or not the accident is attributable to the ngligence of the workman concerned.

11. A Division Bench of the Gujarat High Court in *Harivadan* v. *Chandrasinh*(1) considered the scope of section 110 AA of the old M.V. Act. In that case some amount was deposited by an employer as compensation under the W.C. Act and the claimants later received the amount. There after a claim was made under the M.V. Act for compensation in respect of the same accident. The Division Bench pointed out that if a claimant has exercised his option and has chosen one of the two remedies available to him, he will be entitled to compensation under the chosen remedy only and once he has exhausted his rights to seek compensation under either of the statute, he cannot claim compensation under the other statute. The Division Bench gave accentuation to the words

(1) A.I.R. 1988 Gujarat 69

"May claim" in the said section and observed that these words clearly indicate that the person entitled to compensation must take a conscious decision and opt for compensation under one of the statutes. On the strength of the said interpretation the Bench held that receipt of compensation money deposited by the employer in discharge of his obligation under section 4 of the W.C. Act, without the claimants making any claim for compensation, cannot debar the claimants from claiming compensation under the M.V. Act. The said decision is not, in any manner, contrary to the legal position stated above.

12. Then the question is whether a claimant who got compensation under "no fault liability" as envisaged in Chapter VII A (corresponding to Chapter X of the new M.V. Act) would be visited with the consequence of forfeiture of the right to claim compensation under the W.C. Act.

13. Section 110 AA of the old M.V. Act after amendment through Act 47/82 contained the words "without prejudice to the provisions of Chapter VII A" Section 167 of the new M.V. Act is identical to Section 110 AA of the old Act as it stood after the amendment through Act 47/82. It is therefore manifest that the interdict contained in the provision is without prejudice to any claim that may be made under 'no fault liability'. The scheme of Chapter VII A (and also that of its corresponding chapter in the new M.V. Act) would reveal that the doctrine of no fault liability is a new statutory innovation made by parliament as distinguished from the pristine tortious liability which was based on the theory of fault *Vide United India Insurance Co. Ltd.*, v. *Padmavathy*(2) So the parliament while foreclosing a claimant from making double benefit under two different statutes, has taken care to segregate the compensation received on the basis of the principle of "no fault liability". That amount

(2) 1990 (1) K.L.T 750

remains different from any other compensation. So the claimants cannot be visited with any consequence for receiving any compensation amount towards "no fault liability".

14. But it is only just and proper that the amount received under "no fault liability" is given credit to for fixing the amount of compensation payable under the W.C. Act since the compensation is in respect of the same accident and to the same persons. It must be noted that such an adjustment is envisaged in section 92 B (3) of the old M.V. Act as well as in section 141 (3) of the new M.V. Act.

In the result, we confirm the order of the Workmen's Compensation Commissioner subject to a rider that appellant insurance company can get credit of the amount paid to the claimants under "no fault liability".

V. V. N.