



IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 25th OF MARCH, 2025

MISC. APPEAL No. 2465 of 2020

SMT. RATI BAI AND OTHERS

Versus

LAXMINARAYAN SHIVHARE AND OTHERS

Appearance:

Smt. Meena Singhal – Advocate for appellants.

Shri Bal Krishna Agrawal- Advocate for respondent No.2.

ORDER

This Misc. Appeal, under Section 173 of Motor Vehicles Act, 1988, has been filed against Award dated 14.02.2020 passed by Member, VI Additional Motor Accident Claims Tribunal, Gwalior (M.P.) in MACC No.6400508/2016 by which Claim Petition filed by appellants has been dismissed on the ground maintainability.

2. The facts necessary for disposal of the present appeal, in short, are that deceased Naresh Shivhare was claimed to be working as a cleaner on Eicher Truck bearing Registration No.MP07-GA-2982 which was owned by respondent No.1. On the fateful day, the driver of said vehicle was driving the vehicle in a very safe manner; however, when the said vehicle reached Katni Badwara Road, then the driver of one unknown vehicle by driving his vehicle in a rash and negligent manner dashed the Eicher Truck on which the deceased was sitting as a



cleaner, as a result driver and cleaner of truck, namely, Rajeev Sharma and Naresh Shivhare sustained injuries and died on the spot. Thereafter, some unknown miscreants threw the dead bodies of both the deceased persons by the side of the road and took away the goods which were loaded on the truck. The FIR was lodged. Since deceased were unknown persons, therefore, their dead bodies were buried after getting *post mortem* done and offence under Section 304-A of IPC at Crime No.199/2013 by Police Station Badwara was registered against unknown persons.

3. It appears that appellants approached the Commissioner, under Employees Compensation Act. The said claim petition was dismissed on the ground that appellants have failed to establish the employer-employee relationship. Thereafter, appellants preferred claim petition under Section 163(A) of Motor Vehicles Act. Although the Claims Tribunal held that the accident took place on 18.05.2013 in which the deceased Naresh Shivhare sustained injuries and died on account of the same but held that the Claims Tribunal has no jurisdiction to hear the matter.

4. Challenging the award passed by the Claims Tribunals, it is submitted by counsel for appellants that it is true that the appellants had filed a claim petition under the Workmen's Compensation Act but the Labour Court dismissed the Claims Petition on the ground that the appellants have failed to establish employer-employee relationship. Since the claim was dismissed by the Labour Court, therefore, it was held by the Claims Tribunal that the case in hand is barred by principle of *res judicata*. It is submitted that the Commissioner, Workmen's Compensation Act/Labour Court No.1, Gwalior (M.P.) had held that employer-employee relationship could not be established and unless and until the employer-employee relationship is established, no relief can be granted. Therefore, it was held that it is not necessary to consider the remaining facts. Thus, it is submitted



that principle of *res judicata* would not apply and the Claims Tribunal has committed a material illegality by dismissing the claim on the ground of principle of *res judicata*.

5. *Per contra*, counsel for respondents have supported the reasoning assigned by the Claims Tribunal. It is submitted that it was for the claimants to decide as to whether they would like to prefer claim under Workmen's Compensation Act or Motor Vehicles Act. Once they have decided to approach the Commissioner, Workmen's Compensation Act/Labour Court No.1, Gwalior (M.P.), then they cannot maintain claim petition before Motor Accident Claims Tribunal after having lost from Commissioner, Workmen's Compensation Act/Labour Court No.1, Gwalior (M.P.).

6. Heard learned counsel for parties.

7. Section 11 of the Code Civil Procedure, 1908:

11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been



made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

[Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]

8. Copy of order passed by Commissioner, Workmen's Compensation Act/Labour Court No.1, Gwalior (M.P.), has been placed on record as Ex.D-1. The Commissioner, Workmen's Compensation Act/Labour Court No.1, Gwalior (M.P.) by its Order dated 09.03.2016 passed in Case No.COC 36/B/2015/W.C.A. (Fatal) has held as under:-

16— वादप्रश्न क्रमांक : 3 लगायत 6— प्रार्थीगण का यह प्रकरण कर्मकार क्षतिपूर्ति अधिनियम के अंतर्गत प्रस्तुत हुआ है जिसके अंतर्गत कोई सहायता दिलाए जाने हेतु कर्मकार व नियोक्ता का संबंध मृतक एवं प्रतिप्रार्थी के मध्य होना आवश्यक है चूंकि मृतक का प्रतिप्रार्थी क्र. 1 का कर्मकार होना प्रकरण में प्रमाणित नहीं हुआ है ऐसी स्थिति में प्रार्थीगण को इस न्यायालय से इस प्रकरण में कोई सहायता नहीं दिलाई जा सकती। ऐसी स्थिति में प्रकरण के अन्य तथ्यों पर विचार किए जाने का कोई औचित्य नहीं है।

9. From plain reading of the aforesaid Award, it is clear that since



Commissioner was of the view that appellants have failed to establish employer-employee relationship, therefore, it is not necessary to consider any other aspect as the Commissioner, Workmen's Compensation Act/Labour Court No.1, Gwalior (M.P.), has no jurisdiction to entertain the claim. If findings recorded by the Claims Tribunal are considered in the light of Section 11 of CPC, then merely because the claimants had approached the wrong forum, then that by itself cannot be a ground to reject their claim before the Claims Tribunal. The question as to whether the accident took place in the manner in which it was projected by claimants, what was the income of deceased, liability of Insurance Company etc were never decided by Commissioner, Workmen's Compensation Act/Labour Court No.1, Gwalior (M.P.).

10. Under these circumstances, this Court is of considered opinion that the Claims Tribunal has committed material illegality, by holding that once claim petition filed by claimants before Commissioner, Workmen's Compensation Act/Labour Court No.1, Gwalior (M.P.) has been dismissed on the ground of maintainability, then no relief can be granted under this Act.

11. Consequently, Award dated 14.02.2020 passed by Member, VI Additional Motor Accident Claims Tribunal, Gwalior (M.P.) in MACC No.6400508/2016 is hereby set aside. Matter is remanded back to the Claims Tribunal to decide claim of claimants on its merits. It is specifically held that in the light of observations made by the Commissioner, Workmen's Compensation Act/Labour Court No.1, Gwalior (M.P.), the Claim Petition filed by appellants is maintainable.

Parties are directed to appear before the Claims Tribunal on 13/05/2025 and office is directed to return back the record to the Claims Tribunal immediately.

12. Appeal succeeds and is hereby *allowed*.

(G.S. Ahluwalia)
Judge