

(2001) 03 P&H CK 0159

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 991 of 2000

Yash Pal Sharma

APPELLANT

Vs

Girdhari Lal

RESPONDENT

Date of Decision: March 28, 2001

Acts Referred:

- Motor Vehicles Act, 1988 - Section 107, 110

Citation: (2001) 2 ACC 750 : (2003) ACJ 1434 : (2001) 4 RCR(Civil) 249

Hon'ble Judges: S.S. Sudhalkar, J; Mehtab S. Gill, J

Bench: Division Bench

Advocate: Mr. H.S. Grewal, for the Appellant; Mr. Surinder Kumar and Mr. Gopal Mittal, for the Respondent

Final Decision: Allowed

Judgement

S.S. Sudhalkar, J.

This appeal is filed by the appellant-claimant against the order dated November 30, 1999 passed by the Motor Accident Claims Tribunal, Gurdaspur vide which claim petition of the claimant was dismissed.

2. The appellant had received injuries in a motor accident for which the claim petition was preferred by him. The learned Tribunal framed issues which are as under:-

1) "Whether the accident took place due to rash and negligent driving of bus No. BT 34 by respondent No. 1 ? OPA

2) If issue No. 1 is proved to what amount of compensation the claimant is entitled and from whom ? OPA

3) Whether respondent No. 1 was having valid driving licence at the time of accident ? OPA

4) Relief.

The learned Tribunal recorded the evidence and heard the arguments. The appellant, admittedly had received compensation under the Workmen's Compensation Act, 1923 (hereinafter referred to as "the 1923 Act") for the injuries which he has received in an accident, though he had not claimed any amount from the Commissioner under the 1923 Act. The learned Tribunal dismissed the claim of the appellant because he had taken the amount of compensation under the 1923 Act.

Learned counsel for respondent No. 1 has argued that the appellant was not entitled to claim in view of the fact that he had received the amount under the 1923 Act.

3. We have heard learned counsel for the parties.

4. The relevant provision of the Motor Vehicles Act, 1988, (hereinafter referred to as "the 1988 Act") is in Section 167 thereof, which is reproduced as under :-

" 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."

The learned Tribunal, after quoting the above provision, as relied on two authorities, first is, *New India Assurance Company Ltd. v. Kamar Jahan and Others* 1994 ACJ 100 and the second is, [New India Assurance Co. Ltd. Vs. Kamar Jahan and Others](#) . The relevant provisions of both these cases are incorporated in paragraphs 11 and 12 of the award of the learned Tribunal. However, it can be seen that both these cases go to show that the claimant can make claim under either of the remedies but not under both. In the present case, admittedly, the appellant had not preferred any claim before the Commissioner under the 1923 Act, though the amount was given to him under this Act.

5. On reading Section 167 of 1988 Act, it is clear that the bar of the Section is only regarding making claim i.e., he is to make claim either under the 1988 Act or the 1923 Act. If without making a claim, the claimant is given any amount under the 1923 Act, there is nothing in this Section which would disentitle him for getting the claim under the 1988 Act. This being the position, we find that the learned Tribunal was not correct in dismissing the claim of the appellant on the ground that he had already received the amount under the 1923 Act. The award, therefore, deserves to be set aside and the case deserves to be remanded to the learned Tribunal.

6. Learned counsel for respondent No. 3 has also argued that when the appellant has received the claim under the 1923 Act, that amount be given credit of, if at all,

he is found to be entitled to any amount under the 1988 Act. We leave it for the learned Tribunal to decide it.

7. While directing as above, we also direct that other contentions of the parties shall be taken into account by the learned Tribunal.

8. As a result, this appeal is allowed. The award of the learned Tribunal is set aside and the case is remanded to the learned Tribunal for deciding it afresh in accordance with law.

Parties are directed to appear before the learned Tribunal on May 2, 2001.

9. Appeal allowed.