# Abul Khayer and Others Vs Union of India (UOI) and Others

**Court:** Gauhati High Court (Agartala Bench)

**Date of Decision:** May 30, 2008

**Acts Referred:** Constitution of India, 1950 â€" Article 227
Employees Compensation Act, 1923 â€" Section 4, 4A
Motor Vehicles Act, 1988 â€" Section 140, 143, 157, 166, 167
Penal Code, 1860 (IPC) â€" Section 279, 304A

**Citation:** (2006) ACJ 2682 : AIR 2008 Guw 134 : (2009) 3 GLR 777 : (2008) 3 GLT 119

**Hon'ble Judges:** U.B. Saha, J

**Bench:** Single Bench

**Final Decision:** Dismissed

## Judgement

U.B. Saha, J.
One Shri Abul Khayer and his minor daughters and sons preferred this appeal u/s 173 of the Motor Vehicles Act, 1988

(hereinafter referred to as ""the Act of 1988"") read with Article 227 of the Constitution of India assailing the judgment and order dated 15-3-2001

passed by the learned Member, Motor Accident Claims Tribunal (hereinafter referred to as ""the Tribunal""), West Tripura, Agartala in T.S. (MAC)

101 of 1999 whereby and where-under the learned Tribunal dismissed the claim petition filed by the appellants herein u/s 166 of the Act of 1988

claiming compensation for the death of wife of the claimant-appellant No. 1 and mother of the claimant-appellant Nos. 2 to 5 in a motor accident.

2. Heard Mr. S. Saha, learned Counsel for the claimant-appellants. Also heard Mr. A. Lodh as well as Mr. S. Lodh, learned Counsel for the

respondents.

3. The facts required for disposal of this appeal are:

On 19th July 1998 at about 11.30 hrs. while the deceased Fulchand Nessa, wife of the claimant-appellant No. 1 and mother of the claimant-

appellants No. 2 to 5 was working as CPL under the Officer Commanding, 78 RCC (GREF), C/O 99 APO on Agartala Bishalgarh road near

Mayabati Tea Estate under Amtali Police Station, a Jeep bearing registration No. TRT-3067 coming from Agartala side with a very high speed

dashed the deceased, as a result of which she received grievous bleeding injury all over her body including her head and became unconscious. She

was shifted to GB Hospital where she was declared dead by the doctor. At the time of death, the deceased was 30 years of age and her monthly

income was Rs. 2,000/- and left husband and four children as her legal heirs. Regarding the aforesaid accident, an FIR was lodged before the

Amtali Police Station, which was registered as Amtali PS Case No. 60 of 1998 under Sections 279/304(A) of IPC. As the appellant No. 1 lost

his wife and the remaining appellants lost their mother, they filed petition claiming compensation of Rs. 8,50,000/- u/s 166 of the Act of 1988

before the learned Member, MACT Tribunal, West Tripura, Agartala, which was registered as T.S. (MAC) 101 of 1999. Along with the

aforesaid petition, they also filed another petition u/s 140 of the Act of 1988 for interim award under ''No fault liability'' scheme, which was

registered as Misc. (MAC) 24 of 1999. The respondent Nos. 2 to 4 filed their respective written statement against the claim petition u/s 166 and

written objection against the petition u/s 140 of the Act of 1988. After hearing the respective parties, the learned Tribunal vide order dated 9-12-

1999 awarded Rs. 50,000/- in favour of the claimant-appellants under ''No fault liability'' along with interest @ 12% per annum w.e.f. 4-3-1999

and pursuant to the aforesaid order, the respondent National Insurance Co. Ltd. deposited the aforesaid amount along with interest, total

amounting to Rs. 57,771/- before the Tribunal by a cheque bearing No. 145478 dated 14-7-2000. On 25-2-2000, the respondent No. 1, Union

of India through N/C, 455 RMP.L (GREF) C/o. APO filed a petition under Order 1, Rule 10 of the CPC read with Section 167 of the Act of

1988 stating that a sum of Rs. 1,17,315/- has already been paid to the next kin of the deceased worker as compensation under the Workmen''s

Compensation Act, 1923 (hereinafter referred to as ""the WC Act"") through the District Magistrate & Collector, West Tripura, Agartala and

prayed for recouping the amount from the compensation to be paid u/s 140 of the Act of 1988. In view of the aforesaid application of the

respondent Union of India, the learned Tribunal upon hearing the learned Counsel of both sides vide order dated 15-3-2001 dismissed the claim

petition (TS (MACT) 101/99) on the ground of non-maintainability as the claimant-appellants had already received the amount of Rs. 1,17,315/-

deposited by the respondent Union of India under the WC Act.

4. Being aggrieved by the aforesaid order dated 15-3-2001 of the learned Tribunal dismissing the claim petition u/s 166 of the Act of 1988, the

appellants herein filed the instant appeal.

5. Mr. S. Saha, learned Counsel appearing for the claimant-appellants would contend that the claimant-appellants at no point of time filed any

application for compensation under the WC Act, rather they filed applications under Sections 166 and 140 of the Act of 1988 before the Tribunal

for compensation due to death of their wife and mother respectively, which were registered as TS(MACT) 101/99 and Misc. (MAC) 24 of 1999

respectively and while the aforesaid petitions were pending for decision, the respondent Union of India in the early part of May 1999 paid an

amount of Rs. 1,17,315/- to the claimant-appellants through the DM & Collector, West Tripura, Agartala and the claimant-appellants received the

same under the impression that the said amount was paid as ex gratia by the respondent Union of India in discharge of their obligation as employer

under the provisions of Sections 4 and 4A of the WC Act. Mr. Saha further contended that the respondent Union of India never raised objection

to the petitions filed by the claimant-appellants under Sections 166 and 140 of the Act of 1988 respectively, rather they prayed for recouping the

amount they already paid from the amount of compensation awarded under "No fault liability" scheme and, therefore, it was the duty of the learned

Tribunal to proceed with the claim petition filed u/s 166 of the Act of 1988 and after awarding compensation in favour of the claimant-appellants

deduct the amount paid by the respondent Union of India. Instead of doing so, the learned Tribunal dismissed the claim petition filed u/s 166 of the

Act of 1988. His further submission was that an option is nothing but a choice and that choice should be a free choice without any hindrance from

any corner. In the instant case, it is an admitted position that the claimant-appellants opted for getting the benefit provided under the Act of 1988

and not under the WC Act and the respondent No. 1 employer from their own deposited the amount before the DM & Collector in discharge of

their statutory liability as employer. At best that can be said as an option of the employer and not of the claimant-respondents and the Act of 1988

being a beneficial legislation for providing the just compensation to the next kin of the victim in a motor accident, the learned Tribunal ought to have

considered that the money deposited by the respondent Union of India before the DM & Collector and received by the claimant-respondents was

not just compensation. He also urged that in view of the decision of the Gujarat High Court in the case of Harivadan Maneklal Modi and Another

Vs. Chandrasinh Chhatrasinh Parmar and Others, , the claimant-appellants are entitled to get compensation as prayed for under the Act of 1988

even after receiving the compensation under the WC Act. They received the compensation allegedly under the WC Act without their own option.

On that ground also it was the duty of the learned Tribunal to allow the claim petition to give the benefit to the claimant-appellants under the Act of

1988 and non-providing of such benefit by the learned Tribunal is itself an illegality and hence the impugned order dismissing the claim petition filed

u/s 166 of the Act filed by the claimant-appellants is liable to be set aside and it would be proper to remit the matter to the learned Tribunal to

decide afresh and after awarding compensation under the said Act, if so called for, the amount deposited by the respondent Union of India under

the WC Act can be deducted.

6. Mr. A. Lodh, learned Counsel appearing for the respondent No. 1 Union of India fairly submitted that he has no objection if the claim petition of

the appellants is decided by the learned Tribunal afresh awarding compensation, if any. But the amount already paid by the respondent Union of

India to the claimant-appellants through the DM & Collector should be deducted from the awarded amount, if any, and the same should be

returned to the respondent Union of India.

7. Mr. S. Lodh, learned Counsel appearing for the respondent insurance company raised objection, with regard to tenability of the claim petition

filed by the appellants hereinbefore the learned Tribunal u/s 166 of the Act of 1988 on the ground that Section 167 of the Act of 1988 prohibits

the person entitled to compensation for claiming benefit under both the WC Act as well as the Act of 1988. The person has to opt/elect either of

the forums and in the instant case, by receiving the amount deposited by the respondent Union of India under the WC Act, the claimant-appellants

by their conduct opted for the benefit under the WC Act. Hence, the claim application u/s 166 of the Act of 1988 is not tenable. In support of his

aforesaid submission, Mr. Lodh placed reliance on the decision of this High Court in the case of United India Insurance Co. Ltd. v. Zugula

reported in (2004) 1 GLR 426 : AIR 2004 (NOC) 78 and the decision of the Madhya Pradesh High Court in the case of K.K. Jain and Another

Vs. Smt. Masroor Anwar and Others, Mr. Lodh also contended that the claimant-appellants while filed the petitions under Sections 166 and 140

of the Act of 1988 suppressed the fact of receiving the amount of compensation deposited by the respondent Union of India and such suppression

is nothing but a fraud on the Court and the fraud vitiates everything. He further contended that the impugned order cannot be treated as an award

because no amount has been awarded as compensation and unless the learned Tribunal passed an award, the claimant-appellants have no right to

prefer an appeal u/s 173 of the Act of 1988. In support of this submission, Mr. Lodh relied on the decision of the Apex Court in the case of

National Insurance Co. Ltd. Vs. Mastan and Another, .

8. Against the aforesaid submissions of Mr. Lodh, Mr. Sana, learned Counsel for the claimant-appellants would contend that it is the settled

position of law that once the claim is decided by the learned Tribunal either granting compensation or refusing compensation by way of dismissal of

the claim petition that should be treated as an award. To analyse the meaning of the word ''award'', Mr. Saha referred to Concise Oxford

Dictionary in which the word ''award'' has been defined as a ""Judicial decision"". According to him, ''award'' is nothing but a judicial decision and in

the instant case, the learned Tribunal by the impugned order has given its decision. Hence, the same should be treated as an award. Therefore, the

claimant-appellants have rightly preferred the instant appeal against the same.

9. The moot questions arise for decision in this case are whether the claimant-appellants are entitled to get the compensation under the provisions

of both the Acts namely, the Act of 1988 and WC Act for the death of wife of the claimant-appellant No. 1 and mother of the claimant-appellant

Nos. 2 to 5 due to a vehicular accident and whether the claimant-appellants are entitled to get compensation under the Act of 1988 even after

receipt of the compensation from the employer of the deceased workmen under the WC Act even without their option.

10. Before entering into the merit of the rival submissions of the learned Counsel for the parties and discussing the law reports as cited by the

learned Counsel for the parties, it would be proper for this Court to quote Section 167 of the Act of 1988. Accordingly, the same is quoted herein

below:

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.

11. The provisions of Section 167 of the Act of 1988 starts with the words ""option regarding claims for compensation in certain cases"". Not only

that it also appears that the aforesaid section commences with a non obstante clause, i.e. ""Notwithstanding anything contained in the Workmen''s

Compensation Act, 1923"" meaning thereby what the provisions follow are to be effective notwithstanding anything contained under the provisions

of Workmen''s Compensation Act or under the Motor Vehicles Act for the same injury caused to the deceased victim, but the claimant-appellants

cannot make any claim for compensation before both the forums and the statute is very much clear that the victim or the dependent legal

representatives of the deceased is/are entitled to claim compensation either of the two forums but not before both the forums.

12. In the case of Harivadan Maneklal Modi and Another Vs. Chandrasinh Chhatrasinh Parmar and Others, a Division Bench of the Gujarat High

Court while considering the provisions of Section 110-AA of the Motor Vehicles Act, 1939, which is corresponding to Section 167 of the Act of

1988 held that mere fact that the appellants had received compensation under the Workmen''s Compensation Act is not sufficient to deprive them

of their remedy by virtue of Section 110-A of the Motor Vehicles Act as the appellants of that case had not applied for compensation under the

Workmen''s Compensation Act, it is also held - ""The key words are ''may claim such compensation'' under either of the statute. These words

clearly indicate that the person entitled to compensation must take a conscious decision and opt for compensation under one or the other statute.

Deposit of compensation money by a third party in discharge of his obligation under the Workmen''s Compensation Act can never tantamount to

the option being exercised by the person entitled to compensation. We are therefore, of the opinion that receipt of compensation money deposited

by the employee in discharge of his obligation u/s 4 of the Workmen''s Compensation Act without the appellants having made any claim for

compensation under that statute cannot debar the appellants from claiming compensation under the Motor Vehicles Act by virtue of Section 110-

AA thereof. Such deposit of compensation money and receipt thereof by the dependents of the deceased will not amount to making a claim by the

dependents of the deceased under the provisions of the Workmen''s Compensation Act. It must be realized that the Motor Vehicles Act being a

benevolent legislation, if two interpretations are possible the one which advances the legislative intent of providing ''just'' compensation to the

victims of a motor accident must be preferred.

13. In the case of United India Insurance Co. Ltd. AIR 2004 (NOC) 78 (supra), a co-ordinate Bench of this Court held that Section 167 of the

Motor Vehicles Act, 1988 clearly mandates that one cannot claim relief under both the sections of law, i.e. Motor Vehicles Act and the

Workmen''s Compensation Act. Once option was exercised and an award was passed under Workmen''s Compensation Act, 1923 it is not open

to the claimant to avail the award again under the Motor Vehicles Act.

14. In the case of K.K. Jain and Another Vs. Smt. Masroor Anwar and Others, a Division Bench of Madhya Pradesh High Court while discussing

the scope of Section 110-AA of the M.V. Act, 1939, corresponding to Section 167 of the Act of 1988 held in para 7 as follows:

7. ...The plain term of this provision indicate that where person by reason of the death or bodily injury to any person is entitled to claim

compensation under the two enactments, he has to prefer either of the two and the claim for compensation cannot be made in both the forums.

Choice between these two courses is permissible and the claimant is left free to prefer either of the two forums. Such a situation may arise only

when by nature of the death or bodily injury, the claim for compensation arising out of such death or bodily injury can be entertained under both the

Acts. But when such a claim can be laid only before either of the two Tribunals, Section 110-AA is not attracted at all. The non obstante clause

with which this section begins clearly indicates that the provisions have to be given effect to notwithstanding anything contained under the provisions

of Workmen"s Compensation Act. The bar created is to the making of the claim irrespective of the person or persons who are sought to be made

liable. The plain terms of this section do not permit interpretation that if the claim is to be made against different persons although arising out of the

same accident the bar may not be operative. What is prohibited is making of a claim in both the forums if the claim arises out of death of or bodily

injury to any person. As a necessary corollary, it would follow that when a person entitled to lay a claim on account of death of or bodily injury to

any person makes a claim under the Workmen"s Compensation Act as also under the Motor Vehicles Act, they both cannot proceed and only

one would be tenable. The claimant can at any stage before adjudication of the claim exercise the choice of abandoning a claim in one forum and

may prosecute it in the other. The choice so permissible to a claimant can well be exercised before the claim is adjudicated....

15. Mr. Lodh learned Counsel for the respondent insurance company though placed reliance on the aforesaid case law, but according to this

Court, the same would not help the case of the respondent insurance company as in that case the Division Bench of the Madhya Pradesh High

Court specifically stated that the claimant can at any stage before adjudication of the claim exercise the choice of abandoning a claim in one forum

and may prosecute it in the other. The choice so permissible to a claimant can well be exercised before the claim is adjudicated. In the instant case,

the claimant-appellants admittedly never made any claim for getting compensation under the WC Act, rather they filed the claim petition under the

Act of 1988 before deposition of the compensation amount by the employer of the deceased workman and specifically expressed their option for

getting the compensation as provided under the Act of 1983, which is permissible as per the decision in K.K. Jain and Another Vs. Smt. Masroor

Anwar and Others,

16. In National Insurance Co. Ltd. Vs. Mastan and Another, the Apex Court held (paras 23 & 28 of AIR) -

Section 167 of the 1988 Act statutory provides for an option to the claimant stating that where the death of or bodily injury to any person gives

rise to a claim for compensation under the 1988 Act as also the 1923 Act, 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. Section 157 contains a non obstante clause

providing for such an option notwithstanding anything contained in the 1923 Act.

The Apex Court further held -

The first respondent having chosen the forum under the 1923 Act for the purpose of obtaining compensation against his employer, cannot now fall

back upon the provisions of the 1988 Act therefor, inasmuch as the procedure laid down under both the Acts are different save and except those

which are covered by Section 143 thereof.

From the above, it can easily be held that the legislature left the matter relating to choice of either of the forums under two different statutes to the

claimant. Therefore, this Court is of the opinion that the above decision would also not help the case of the respondent insurance company except

the law decided by the Apex Court that a claim ant is not entitled to claim compensation under both the statutes due to incorporation of the non

obstante clause in Section 167 of the Act of 1988 without prejudice to the provisions of Chapter X of the Act of 1988 meaning thereby a claimant

is entitled to get the benefit of either of the statutes including the benefit provided u/s 140 of the Act of 1988, i.e. "No fault liability.

17. The submission of Mr. Saha learned Counsel for the claimant-appellants may apparently have some force in view of the decision of the Gujarat

High Court in the case of Harivadan Maneklal Modi and Another Vs. Chandrasinh Chhatrasinh Parmar and Others, but considering the aforesaid

decision in Harivadan Maneklal Modi (supra) along with other decisions, a Division Bench of this Court in the case of Meena Devi v. Secretary to

the Government of India, Ministry of Shipping and Transport, New Delhi reported in (1999) 2 GLR 524 held that once an option is exercised by

the heirs of the deceased either to have compensation under the Workmen"s Compensation Act or to file an application under the Motor Vehicles

Act, that option will be final and he cannot later on or simultaneously approach the other forum. This Court is bound by the decision of the Division

Bench of this Court in the case of Meena Devi (supra).

18. From the law reports (supra), this Court can come to a conclusion that a claimant has no right to approach both the forums prescribed by the

Act of 1988 as well ass WC Act. He can opt for the benefit under either of the Acts and his option must be a conscious option, i.e. free choice.

Not only that the claimant is not bound by the act of the employer of the deceased workman, i.e. even if the third party deposits the compensation

in discharge of its statutory obligation under the WC Act that cannot debar the; claimant from choosing the forum under the Act of 1988 as the

claimant is the best person to exercise his option. The claimant has the right before adjudication of claim to exercise option/choice by way of

abandoning his claim in one forum and may proceed with the other forum. Now, it has to be seen whether in the instant case the claimant-

appellants abandoned their claim so far the amount deposited by the respondent Union of India as employer of the deceased workman before the

District Magistrate, West Tripura under the WC Act is concerned.

19. It is an admitted position, as appeared from the pleadings of the parties that the claimant-appellants never applied for compensation under the

provisions of WC Act, but they received the amount deposited by the employer Union of India. Now, again question comes up for decision

whether by way of receiving the amount of compensation deposited by the respondent No. 1, Union of India before the District Magistrate &

Collector, West Tripura, Agartala, the claimant-appellants have already exercised their option for the benefit provided under the WC Act or not.

According to this Court, the option must be with a free choice. In the instant case, the claimant-appellants never expressed their choice for getting

the benefit as provided under the WC Act, rather they filed the claim petition under the provisions of the Act of 1988 before receiving the amount

deposited by the respondent Union of India under the WC Act before the DM & Collector. Probably for that reason the learned Tribunal in its

order dated 16-8-2000 in Misc. (MAC) 24 of 1999 specifically stated, inter alia, ""Learned Advocate appearing for the claimant-petitioner has

verbally submitted that claimant-petitioner intend to get compensation as per Motor Vehicles Act and as such they intend to proceed with this case

and another case filed u/s 166 of the M.V. Act. In the instant case interim compensation of Rs. 50,000/- has already been awarded u/s 140 of the

M.V. Act and pursuant to that order the insurer of the offending vehicle, i.e. opposite-party No. 3 National Insurance Company Limited, Agartala

Branch, already paid an amount of Rs. 57,771/- by a cheque lying with this Tribunal. If it is the intention of the claimant-petitioners to proceed

under the Motor Vehicles Act for getting compensation, in that event claimant-petitioners should pay back aforesaid amount of Rs. 1,17,315/-

either to this Tribunal or to the D.M. & Collector, West Tripura District from whom they received said compensation which was paid by the

Government of India through the D.M. & Collector, West Tripura District. It is also submitted by the learned Advocate for the claimant-petitioner

that some amount has already been spent by them. That being the position the aforesaid amount less Rs. 57,771/- be paid to this Tribunal by next

date and only then claimant-petitioner shall be allowed to proceed with their claim under Motor Vehicles Act. Otherwise it shall be deemed that

they are satisfied with the compensation of Rs. 1,17,315/- received under the Workmen''s Compensation Act and which was paid by the

Government of India through the District Magistrate & Collector, West Tripura District to the claimant-petitioners"". But the claimant-appellants did

not deposit the amount before the learned Tribunal. Hence, there was no other option before the learned Tribunal except to hold that the claimant-

appellants were satisfied with the amount of compensation of Rs. 1,17,315/-, which was received by them from the respondent Union of India

through the DM & Collector, West Tripura under the WC Act. Accordingly, the learned Tribunal vide order dated 15-3-2001 dismissed the

application filed by the respondent Union of India praying for allowing them to draw Rs. 57,771/- holding, inter alia, ""Since Union of India already

paid aforesaid amount under Workmen''s Compensation Act to the claimant-petitioners and that money was duly accepted by the claimant-

petitioners, there is no scope to make refund of that amount to the Union of India and hence said prayer stands rejected."" On the same day, the

learned Tribunal passed order for returning back the cheque of Rs. 57,771/- to the insurance company earlier deposited by them before the

learned Tribunal. But it is not clear whether the aforesaid cheque has already been handed over to the insurance company or not.

20. From the aforesaid order of the learned Tribunal, it cannot be said that the learned Tribunal declined to decide the claim petition filed u/s 166

of the Act of 1988 on the ground of receipt of compensation by the claimant-appellants from the respondent Union of India through the DM &

Collector, West Tripura, rather it can be opined that keeping in mind that the Act of 1988 being a benevolent legislation two interpretations are

possible regarding the option, the learned Tribunal accepted the interpretation, which helps the claimant-appellants to get the benefit of

compensation and they were also provided an opportunity to return the amount of compensation they received from the Union of India through the

DM & Collector, West Tripura or even to deposit the aforesaid amount deducting the amount of Rs. 57,771/- as awarded by the learned Tribunal

under "No fault liability" scheme along with interest and to proceed with the proceeding under the Act of 1988. But the claimant-appellants failed

to do so meaning thereby the claimant-appellants opted for by their conduct and satisfied themselves with the benefit provided under the WC Act

and accordingly, they retained the money already received by them as deposited by the employer of the deceased workman, i.e. the respondent

Union of India before the District Magistrate & Collector, West Tripura.

21. This being the position, according to this Court, the learned Tribunal did not commit any wrong, rather rightly held that by way of their conduct,

the claimant-appellants opted for the provisions of WC Act to get the compensation or otherwise they are deemed to be satisfied with the

compensation of Rs. 1,17,315/- received under the WC Act.

22. In view of the aforesaid position, the instant appeal fails and accordingly, it is dismissed leaving the parties to bear their own cost.