

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF APRIL 2022

BEFORE

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

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WRIT PETITION NO.17583/2017 (L-KSRTC)

BETWEEN:

THE MANAGEMENT OF
KSRTC, 2ND DEPOT
MANGALURU DIVISION
BEJAJI, MANGALURU-575 004
(REPRESENTED BY ITS DIVISIONAL CONTROLLER)
NOW REP. BY ITS CHIEF LAW OFFICER
K.S.R.T.C SHANTHINAGAR
BANGALORE - 560 027. ... PETITIONER

(BY SMT. SHWETHA ANAND, ADVOCATE)

AND:

SRI K.SHIVARAM
S/O PARAMESHWARA
AGED ABOUT 59 YEARS
R/AT ONTHANADKA HOUSE
KADABA VILLAGE
PUTTUR TALUK
DAKSHIN KANNADA - 574 201. ... RESPONDENT

(BY SRI V.S.NAIK, ADVOCATE)

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED AWARD DATED 13.04.2016 PASSED BY THE PRESIDING OFFICER, LABOUR COURT. C/C.IV-ADDL. DISTRICT AND SESSIONS JUDGE, MANGALORE (D.K) IN APPLICATION NO.1/2012 AT ANNEX-C.

THIS PETITION COMING ON FOR FURTHER HEARING THIS DAY, THE COURT, MADE THE FOLLOWING:

ORDER

Heard.

2. Aggrieved by the direction of the Labour Court to pay compensation of Rs.2,97,120/- with interest at 6% per annum to the respondent, the employer has preferred the above petition.

3. The respondent was working as a driver in the petitioner's organization. On 03.03.2004, during the course of his duty, the bus driven by him met with an accident on Bengaluru-Mangaluru route and he suffered injuries. The medical board issued certificate dated 10.01.2006 stating that due to the said injuries, the respondent cannot discharge his duty as driver.

4. Admittedly, based on such certificate the petitioner assigned the respondent alternate light work. The petitioner treated the respondent's period of absence from March 2004 to October 2005 as on duty and paid full salary. Admittedly, the respondent filed MVC.No.1067/2004 claiming compensation. In that petition he was awarded compensation of Rs.48,728/- with interest. The petitioner satisfied the said award.

5. The respondent got issued notice Ex.A-7 to the petitioner claiming compensation of Rs.5,50,000/- with interest at 12% per annum under the Employee's Compensation Act, 1923 (for short 'Act, 1923') on the ground that he suffered disability during the course of employment. Then he preferred claim petition before the Labour Court Mangaluru under Section 33C(2) of the Industrial Dispute Act, 1947 (for short 'the I.D.Act') claiming compensation of Rs.5,50,000/- along with interest at 18% per annum and Silver Medal Allowance 50% per month from 01.04.2004 onwards along with 18% interest.

6. The petitioner contested the said claim on the ground that since respondent already received compensation under the Motor Vehicle Act, he is not entitled to make further claim. It was further contended that since respondent did not perform the duty of driver, as per the Circular No.722/1997 he was not entitled to silver medal allowance. The petitioner also contested the application on the ground of maintainability without raising any industrial dispute.

7. The Labour Court by the impugned award Annexure-C dated 13.04.2016 allowed the claim petition and awarded Rs.2,97,120/- with interest as aforesaid on the ground that the respondent can exercise his option to claim the compensation both under the Motor Vehicle Act and Workmen Compensation Act. The Labour Court awarded the silver medal allowance also with effect from 01.04.2004. The Labour Court did not consider the question of maintainability of the petition under Section 33C(2) of the I.D. Act.

Submissions of Smt.Shwetha Anand, learned Counsel for the petitioner:

8. Section 33C (1) and (2) of the I.D.Act shall be read in an integrated and holistic manner. Section 33C (2) of the Act can be invoked only in relation to an award or the settlement contemplated under Section 33C(1) of the I.D. Act. As the respondent did not perform the duty of driver, after the accident he was not entitled to silver medal allowance.

9. In support of her submissions, she relies on the following judgments:

- i) **National Building Construction Corporation V.s Pritam Singh Gill and Others¹**
- ii) **Municipal Corporation of Delhi V.s Ganesh Razak and Another²**
- iii) **State Bank of India V.s Ram Chandra Dubey and Others³**
- iv) **Kanhaiyalal Vishindas Gidwani V.s Arun Dattatray Mehta and Others⁴**
- v) **State of U.P and Another V.s Brijpal Singh⁵**
- vi) **Pentakota Satyanarayana and Others V.s Pentakota Seetharatnam and Others⁶**
- vii) **National Insurance Co.Ltd V.s Mastan and Another⁷**
- viii) **A.P.SRTC and Another V.s B.S.David Paul⁸**
- ix) **K.C.Skaria V.s Govt. of State of Kerala and Another⁹**
- x) **U.P.State Road Transport Corporation V.s Birendra Bhandari¹⁰**
- xi) **D.Krishnan and Another V.s Special Officer, Vellore Cooperative Sugar Mill and Another¹¹**

Submissions of Sri V.S.Naik, learned Counsel for the respondent:

10. Section 33C(2) of the I.D. Act is an independent provision and need not be preceded by an award. Irrespective of workmen getting compensation

¹ (1972) 2 SCC 1

² (1995) 1 SCC 235

³ (2001) 1 SCC 73

⁴ (2001) 1 SCC 78

⁵ (2005) 8 SCC 58

⁶ (2005) 8 SCC 67

⁷ (2006) 2 SCC 641

⁸ (2006) 2 SCC 282

⁹ (2006) 2 SCC 285

¹⁰ (2006) 10 SCC 211

¹¹ (2008) 7 SCC 22

under the Motor Vehicle Act, he is entitled to claim under the Act, 1923.

11. In support of his submissions, he relies on the following judgments:

- i) **Punjab National Bank Ltd V.s K.L.Kharbanda¹².**
- ii) **Lenox Photo Mount Manufacturing Company Madurai V.s Labour Court Madurai¹³**

12. Above submissions show that maintainability of the claim petition under Section 33C(2) of the I.D. Act is the main question. The question of considering whether the workman can claim remedies under the Motor Vehicle Act as well as the Employee's Compensation Act, 1923 arises only if the question of maintainability is held in his favour.

13. It is contended that Section 33C (2) of the I.D Act can be invoked only when there is award and by way of execution of such award.

14. Section 33C (1) and (2) of the I.D Act which are relevant for the purpose of this case read as follows:

¹² AIR1963 SC 487

¹³ 1965 (2) LLJ page 423

33C. Recovery of money due from an employer.- (1) Where any money is due to a workman from an employer ***under a settlement or an award*** or under the provisions of Chapter VA or Chapter VB, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, ***make an application to the appropriate Government*** for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the ***amount of money due*** or as to the amount at which such benefit should be computed, ***then*** the question may, ***subject to any rules*** that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

15. Section 33C(2) of the I.D. Act refers to any amount due to workman. Section 33C(1) of the I.D. Act speaks of any amount due to workman under the settlement or award under the provision of Chapter 5-A or 5-B of the I.D. Act.

16. The respondent claimed that he was entitled to claim the amount due to the injuries suffered by him during the course of employment. Therefore his claim was under the Act, 1923. In such event the claim lies before the Employee's Compensation Commissioner and not before the Labour Court.

17. The larger bench of Hon'ble Supreme Court in para 12 of the judgment in ***Municipal Corporation of Delhi's*** case referred to supra in this regard held as follows:

"12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis ***of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition*** thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33C(2) of the Act. ***The Labour Court has no jurisdiction to first decide the workmen's entitlement and then***

proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33C(2) of the Act. ***It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated*** as incidental to the Labour Court's power ***under Section 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.***

(Emphasis supplied)

18. Similarly in para No.8 of the judgment in ***State of U.P. and Another Vs Brijpal Singh's*** case raised the point whether the Labour Court had jurisdiction to entertain and decide the claim under Section 33C(2) of the I.D Act which is not preceded by an award or settlement and considered the same. In para No.10 of the judgment it was held as follows:

10. It is well settled that the ***workman can proceed under Section 33C(2) only after the Tribunal has adjudicated on a complaint under Section 33A or on a reference under Section 10*** that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of Punjab Beverages Pvt. Ltd. Vs. Suresh Chand, (1978) 2 SCC 144 held that a proceeding under Section ***33C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman*** from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to

compute the benefit in terms of money. Proceeding further, this Court held that the right to the **money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon** or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. This Court further held as follows:

"It is not competent to the Labour Court exercising jurisdiction under Section 33C(2) to arrogate to itself the functions of an industrial tribunal and entertain a claim which is not based on an existing right but **which may appropriately be made the subject matter of an industrial dispute** in a reference under Section 10 of the Act."

(Emphasis supplied)

19. In para-13 of the judgment it was held that the Labour Court had no jurisdiction to adjudicate the claim made by the Workman under Section 33C (2) of the I.D Act in an undetermined claim and until such adjudication is made by the appropriate forum. The same view is reiterated in other judgments.

20. Reading of the judgment in **Punjab National Bank Ltd's** case relied by the learned Counsel for the respondent shows that the application in the said case was preceded by an award. Therefore the said judgment cannot be justifiably applied to the facts of the present case.

21. In view of the specific forum provided under the Act, 1923, the Labour Court had no jurisdiction to entertain the claim petition. Though the Workman suffered certain disability, the question was due to such disability, whether there was loss of earning. Admittedly after the accident, the respondent received remuneration in the pay scale of drivers. Therefore whether he was entitled to claim compensation under the head of loss of earning or earning capacity was a matter of adjudication.

22. Similarly in view of he not performing the work as a driver and assignment of lighter work to him, whether he was entitled to silver medal allowance was a matter of adjudication. Therefore that could have been subject matter of a dispute under the I.D Act. Without such adjudication, in the light of the judgment of Hon'ble Supreme Court referred to *supra*, the respondent could not have maintained the petition under Section 33C(2) of the I.D. Act. The Labour Court committed error in assuming the jurisdiction under

Section 33C(2) of the ID Act. The award is liable to be set aside. Therefore the petition is allowed.

The impugned award is hereby set aside. The claim petition of the petitioner is rejected.

**Sd/-
JUDGE**

PKN