

is not entitled to any relief even if he was not heard before the extension of time was granted by the learned Magistrate. He in fact need not have been heard at that stage for that was between the Magistrate and the investigation. The learned Magistrate had *ex-facie* given reasons for permitting continuance of investigation and those orders as such are not the subject matter of challenge in these proceedings, keeping apart whether the petitioner was heard at that stage or not. It is only the later order whereby the learned Magistrate refused to discharge the accused that was challenged in these proceedings. The view of the learned Magistrate being in accordance with law is unassailable and his order is thus upheld.

(9) For what has been said and noticed above, there is obviously no merit in this petition which fails and is accordingly dismissed.

N.K.S.

Before : P. C. Jain, C. J. and I. S. Tiwana, J.

DASHMESH BUS SERVICE (REGD.), RAIKOT,—Appellant.

*versus*

JAGIR KAUR AND OTHERS,—Respondents.

Letters Patent Appeal No. 760 of 1983

December 11, 1985.

*Motor Vehicles Act (IV of 1939)—Section 110-A—Workmen's Compensation Act (VIII of 1923) as amended by Act (LXV of 1976)—Section 3 & 22—Code of Civil Procedure (V of 1908)—Order 23, Rule 1—Punjab Motor Accident Claims Tribunal Rules, 1964—Rule 20—Application for compensation filed under the provisions of Section 110-A—Such application got dismissed as withdrawn by the claimants—Another application for compensation filed under the provisions of Section 22 of the Workmen's Compensation Act—Such application—Whether maintainable.*

*Held*, that even if it be presumed that the provisions of Order 23, Rule 1 of the Code of Civil Procedure, 1908, are applicable to the proceedings under the Motor Vehicles Act, 1939, the same may well debar a claimant from instituting fresh proceedings on the

Dashmesh Bus Service (Regd.), Raikot v. Jagir Kaur and others  
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same cause of action under the Motor Vehicles Act but this rule does not in any manner affect the proceedings under a different Act. Moreover, it is not possible to hold that mere filing of a claim under section 110-A of the Motor Vehicles Act and later getting it dismissed as withdrawn can have the effect of debarring the claimant from the relief claimed under Section 22 of the Workmen's Compensation Act, 1923. It is further clear from clause 5 of Section 3 of the Workmen's Compensation Act that the use of word 'has' as used in this clause cannot be taken as a substitute for 'had'. The only implication of the language of this clause is that there cannot be parallel proceedings, i.e., under the Motor Vehicles Act as well as in a Civil Court or before the Tribunal. As such it has to be held that second application filed by the claimant under the provisions of the Workmen's Compensation Act is maintainable.

(Para 4)

*Letters Patent Appeal Under Clause X of the Letter Patent of Punjab and Haryana High Court against the judgment of Hon'ble Mr. Justice S. S. Sodhi dated 29th July, 1983 delivered in F.A.O. No. 320 of 1979 on the title 'Jagir, Kaur etc. versus Dasmesh Bus Service etc.'*

R. P. Bali, Advocate, for the Appellant.

Maharaj Bakhsh Singh, Advocate, for Respondent 1 to 5.

R. M. Suri, Advocate, for Respondent No. 6.

#### JUDGMENT

*I. S. Tiwana, J.*

(1) The primary question that needs to be settled in this letters patent appeal is as to whether the filing of a claim for compensation under section 110-A of the Motor Vehicles Act, which is later dismissed as withdrawn, debars the subsequent filing of a claim for compensation under the Workmen's Compensation Act, 1923 (for short, the Act), on the same cause of action? The following facts giving rise to it are not in dispute.

(2) Ajit Singh, an employee of the appellant Company, while driving its bus, PUM 7105, met with an accident on December 15, 1975 and as a result thereof, died two days later, i.e., on December 17, 1975. His widow and children filed a claim for compensation under section 110-A of the Motor Vehicles Act but the same was got dismissed as withdrawn on December 15, 1976. Copy of the order of the Tribunal, Exhibit R. 15, is on the records of this case. Later, the present claim petition was filed under the Act on March 21, 1977 and one of the contentions raised in reply to it relates to

its maintainability on the ground that the respondent-claimants having elected to avail of the remedy under the Motor Vehicles Act, cannot now seek the relief under the Act on the same cause of action. This, however, is not disputed that the claim for compensation was competent under both the Acts, i.e., under section 110-A of the Motor Vehicles Act and under section 22 of the Act.

(3) For non-suiting the claimants, the counsel for the appellant urges two points:

- (i) By virtue of Rule 20 of the Punjab Motor Accidents Claims Tribunal Rules, 1964, the provisions of Order 23, Rule 1 are applicable to the proceedings under the Motor Vehicles Act and the claim of the respondents having been dismissed as withdrawn without any permission to file a fresh one on the same cause of action, they cannot maintain the present petition.
- (ii) The claimants having elected to avail of the remedy under the Motor Vehicles Act with regard to their claim for compensation, cannot now claim relief under the Act in view of section 3(5) of the same.

Having heard the learned counsel for the parties at some length we, however, find no merit in either of these two contentions.

(4) So far as the first contention is concerned, we are of the opinion that even if the provisions of Order 23, Rule 1 of the Code of Civil Procedure are applicable to the proceedings under the Motor Vehicles Act, the same may well debar a claimant from instituting fresh proceedings on the same cause of action under the said Act, i.e., the Motor Vehicles Act but this rule does not in any manner affect the proceedings under a different Act, i.e., the Act. As has been pointed out above, it is not in dispute before us that the claim for compensation was maintainable under both the Acts though of course the claimants could not have double payment as a result of the double proceedings. The phraseology of section 110-AA of the Motor Vehicles Act makes this position amply clear. It reads as follows:—

“110-AA. Option regarding claims for compensation in certain cases.—

Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923), where the death

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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, 1928 (8 of 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."

So far as the second contention of the learned counsel for the appellant is concerned, his whole reliance in that regard is on section 3 of the Act the relevant part of which reads as follows:—

"Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person."

In order to sustain his contention in the light of this provision, the learned counsel also places reliance on *Radhabai Bhikaji v. Baluram Daluram*, (1) and *Subasini Panda and others v. State of Orissa and others*, (2). Firstly we are quite doubtful as to whether a Tribunal under the Motor Vehicles Act can be equated with a civil Court for purposes of the above noted provision but even if it can be, we do not find it possible to hold that mere filing of a claim under section 110-A of the said Act and later getting it dismissed as withdrawn can have the effect of debarring the claimant from the relief under the Act. The effect of getting a petition dismissed simpliciter or as withdrawn has been considered by a Division Bench of the Delhi High Court in *Ashoka Marketing Ltd. v. B. L. Gupta and another*, (3) and it has been opined thus:—

"Whatever may be the stage at which the petition is withdrawn, the effect of the order dismissing the petition depends upon the order passed by the Court or the Tribunal and not the stage of its withdrawal. The Court or the tribunal would be free to dismiss the petition on merits. If the order were simply "dismissed" then it

(1) 1970 ACJ. 403.

(2) 1984 ACJ. 276.

(3) 1975 Lab. I.C. 1715.

would be a dismissal on merits. If the order does not give reasons, the order may not act as *res judicata* on the principle underlying the decision of the Supreme Court in *Daryao v. The State of U.P.* (4). But nevertheless it would be a final order which is appealable on the principle of *Ramesh v. Gendalal*, (5). But if the Court chooses not to decide the merits and expressly passes the order "dismissed as withdrawn", the order is neither *res judicata* nor final. No appeal lies from it. On the contrary, a fresh petition would be maintainable in the absence of a provision like Order XXIII, Rule 1, Civil Procedure Code."

We fully agree with this enunciation of law and hold that mere dismissal of a claim petition as withdrawn cannot amount to dismissal of the petition on merits. To our mind all that clause (5) of section 3 of the Act as reproduced above ensures is that a workman cannot have double payment and the employer is protected from double proceedings. Further the use of the word 'has' (instituted in a civil Court) as used in this clause of section 3 cannot be taken as a substitute for 'had' (instituted in a civil Court). The only implication of the language of this clause is that there cannot be parallel proceedings, i.e., under the Act as well as in a civil Court or before the Tribunal. The learned counsel, however, relies on the following observations in *Radhabai Bhikaji's case* (supra):—

"The disqualification for proceeding in the Workman's Compensation Commissioner's Court does not start when the claimant obtains compensation elsewhere, but starts the moment he moves another Court. Similarly, the disqualification to move any other Tribunal starts not when the Workmen's Compensation Commissioner awards compensation but the moment he is approached with a claim".

To our mind, these observations are not only obiter but appear to have been made on first impression. That was a case where the claimant had already been granted compensation by the Motor Accidents Claims Tribunal and then she again sought compensation under the Act. The claim obviously was untenable. The other judgment relied upon by the learned counsel for the appellants

(4) (1962) (1) SCR 574.

(5) A.I.R. 1966 S.C. 1445.

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too does not have any bearing on the facts of this case. In that case, claimants' petition under section 110-A of the Motor Vehicles Act had been dismissed for default on December 21, 1974 and later an application for restoration of the said claim petition had too been dismissed. It was in view of these facts that the Tribunal held that no second claim application under section 110-A of the Act was maintainable. The alternate argument that even though the claimants were not entitled to compensation under section 110-A of the Act, still they should have been awarded compensation under the Workmen's Compensation Act, 1923, too was repelled with the following observations:—

“The nature of proceedings under the 1923 Act and the Motor Vehicles Act is widely different. Different procedures and limitations have been prescribed in the matter of claim to be laid before the Tribunal under the two Acts. There is essential difference between the mode of payment of compensation under both the aforesaid Acts. Thus in my opinion the Accident Claims Tribunal could not exercise jurisdiction under the 1923 Act in substitution of the prescribed authority under the Motor Vehicles Act.”

Thus it is patent that the ratio of neither of the two judgments referred to above is even remotely relevant to the decision of the question before us.

(5) For the reasons recorded above, we find no merit in this appeal and dismiss the same with no order as to costs.

H.S.B.

Before : M. M. Punchhi, J.  
PRITHVIRAJ SINGH,—Petitioner.

versus

PAVANVIR KAUR,—Respondent.  
Criminal Misc. No. 2195-M of 1985

December 17, 1985.

Code of Criminal Procedure (II of 1974)—Section 125—Application of wife for maintenance allowed—Claim of the wife to arrears—Whether any more enforceable after the death of the husband—Husband's estate—Whether could be burdened with enforceability of maintenance order for any period beyond his death.