
(1985) 01 KL CK 0005
In the High Court Of Kerala
Case No : M.F.A. No. 405 of 1985

Abad Fisheries

APPELLANT

Vs

Commissioner for Workmen's Compensation

RESPONDENT

Date of Decision : 16-01-1985

Acts Referred:

Employees State Insurance Act, 1948 — Section 5, 52, 53, 61
Workmens Compensation Act, 1923 — Section 5(5)

Citation : (1985) ACJ 349 : (1985) 50 FLR 512 : (1994) 3 LLJ 59

Hon'ble Judges : R.Bhaskaran, J;M.P. Menon, J

Bench : Division Bench

Advocate : B.S. Krishna, for the Appellant; T.K.P. Pillai, C. Sankaran Nair and M. Stanley Fernandez, for the Respondent

Final Decision : Allowed

Judgement

Menon, J.—This is an appeal by the employer against the order of the Commissioner for Workmen's Compensation directing deposit of Rs. 16,800, for payment as compensation to the 2nd respondent, in connection with the death of his daughter consequent on an employment injury sustained by her in the course of employment under the appellant. The only point raised is that the deceased was an "insured person" within the meaning of the Employees' State Insurance Act, 1948, the remedy under the Workmen's Compensation Act was barred. The 2nd respondent had first filed an application before the Insurance Court, u/s 75 of the Act in January, 1980, and the application before the Workmen's Compensation Commissioner was filed only thereafter, in March, 1980. The E.S.I. claim was rejected for reasons unknown and the W.C. Commissioner took the view that the bar u/s 53 of the E.S.I. Act could operate only if the dependent was actually in receipt of benefits u/s 52.

2. We are unable to support this view. Section 2(8) of the E.S.I. Act defines "employment injury" as personal injury caused to an employed person by accident arising out of and in the course of employment. Section 46 enumerates

the various types of benefits an insured person or his dependents can claim from the Corporation and one such benefit is "dependents" benefit". Section 52 provides that where an insured person dies as a result of an employment injury, dependents' benefit shall become payable in accordance with the provisions of the First Schedule. Section 53 imposes a bar against receipt or recovery of compensation or damages from the employer in respect of an insured person. The section reads:

"53. Bar against receiving or recovery of compensation or damages under any other law.- An insured person or his dependents shall not be entitled to receive or recover, whether from the employer of the insured person, or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force, or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act.

Section 61 reads:

"61. Bar of benefits under other enactments.- When a person entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment."

If all the relevant provisions are read together, it is impossible to agree with the Commissioner that the bar under Sections 53 and 61 are attracted only when benefits are actually received or recovered, and not when they are only receivable or recoverable. Section 52 positively provides that "dependents' benefit" shall be payable to the dependents of an insured person dying out of employment injury. Section 53 stipulates in unambiguous language that a dependent shall not be entitled to receive or recover any compensation from the employer under the Workmen's Compensation Act in respect of an employment injury sustained by an insured person. The bar is unconditional; it does not depend on actual receipt of benefit by the dependent. Assuming, as counsel for the 2nd respondent contended, that Section 53 applies only to receipt or recovery of compensation in respect of employment injury, and not to compensation in respect of death following an employment injury, one has still to reckon with Section 61 which provides that where a person is entitled to any benefit under the Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment. The 2nd respondent is admittedly entitled to dependents' benefit u/s 52; and that entitlement bars his claiming compensation under the Workmen's Compensation Act, because the periodical payments referred to in sections 46 and 52 are "similar benefits".

3, Dealing with the scheme of the Employees' State Insurance Act and the object of section 61 in particular, the Punjab High Court had observed in *Lakshmi Oil Mills v. Thakur Doss*, [1972] 41 FJR 667, at pp. 670-671:

"The Act provides for statutory compulsory insurance in certain cases by the employers. They have to pay the insurance premia for the insured workmen

working in their factories. It would be incongruous that such an employer should continue to be liable to the workman for the injury. On the general principles of insurance law, it is inapt that a person, who has insured himself against loss, should nevertheless remain liable for the same despite such insurance. The very object and purpose of the insurance and the premium paid by the employer would be lost if he were to continue to be liable under other enactments for all those benefits which are available to the insured workman under the Act. The object of Section 61 abovesaid is apparently to prevent such a contingency. Equally so, the bar appears to have been created to avoid a multiplicity of legal proceedings. If statutory insurance under the Act ensures to the benefit of an insured workman, and the Corporation created under the Act is to be liable for the payment of disablement and dependents' benefit, then there appears no reason why a duplication of the proceedings would be allowed in allowing the insured workman to make similar or identical claims under other enactments also. The object can equally be to prevent a double benefit accruing to the workman as also a corresponding double liability falling upon the insured employer. The primary liability for the benefits available under the Act is provided under the relevant provisions of the same with the express exclusion of claiming similar ones under other enactments."

4. Counsel for the 2nd respondent would contend that the provisions of the W.C. Act are more liberal than those of the E.S.I. Act, and that a construction denying the benefits of the former to an insured person or his dependent should be avoided. There is no scope for manoeuvre when the statutory language is plain. That apart, we are also not sure that the provisions of the W.C. Act are more liberal or beneficial. Under paragraph (8) of the First Schedule to the E.S.I. Act, the widow and the minor children of a deceased employee are entitled to get dependents' benefit at three fifths and two-fifths of the full rate respectively, the widow getting it for life or till remarriage, and the children getting it till attaining majority. The parent no doubt gets only at three tenths of the full rate, and that too, only in the absence of other dependents. The liberality or otherwise of the whole scheme cannot be tested with reference to the rare instance where the parent happens to be the only dependent. He too gets the periodical payments for life, though his life expectancy may not be long. In the case of widows and minor children, where a pension for life is assured for the former and a steady income till attainment of majority is assured for the latter, the E.S.I. Scheme seems to be more beneficial. It is common knowledge that recovery of lump sums from employers is sometimes found impossible, either because of their genuine incapacity to pay or for other reasons. The E.S.I. Scheme, on the other hand, assures steady and prompt payments by a public statutory corporation. Sections 51A to 51D of the E.S.I. Act remove many of the pitfalls usually associated with the establishment of a claim before the W.C. Commissioner. Claims for compensation arising from industrial accidents were originally based on principles of fault liability. The progress achieved through workmen's compensation enactments consisted in the recognition of the rules of strict

liability. In all advanced countries, however, further progress has been made by way of social security legislations and insurance, as in the case of the social Security Act of the United States and the National Insurance Acts of the United Kingdom. The principle seems to be that the States, the employers and the employees should all participate in the cost of rehabilitating the family of the unfortunate victim by making appropriate contributions to an insurance scheme. The movement from fault liability to strict liability, and from strict liability to social security, cannot be stopped in a developing country like ours for the only reason that an aged parent fortuitously becoming entitled to claim compensation for the death of his daughter would prefer to get a lump sum payment.

5. Legislative history also supports the view that the intention of Parliament has been to exclude the machinery of the W.C. Act in respect of insured employees covered by the E.S.I. Act. As the Act originally stood, "employment injury" was defined as personal injury "which would entitle such employee to compensation under the Workmen's Compensation Act, 1923, if he were a workman within the meaning of the said Act".

Dependents' benefits u/s 52 was payable at the rates specified in the Second Schedule, and this Schedule also referred to the rates prescribed under the Workmen's Compensation Act. Section 53 provided that where an insured person was entitled to receive compensation under the Workmen's Compensation Act, he could claim, "in lieu of such compensation", the periodical payments prescribed by the section. The scheme of the E.S.I. Act at the stage was only to substitute insurance benefits for compensation claims and the Insurance Court for the W.C. Commissioner. Subsequent amendments to the aforesaid sections, however, show that the reference to the Workmen's Compensation Act have been completely dropped and that the E.S.I. Act, as it now stands, is designed to operate as a self-contained code in respect of employment injuries. Reference to the W.C. Act is now to be found in Section 53 alone, and that is only for the purpose of imposing the "bar". Section 5(5) of the Workmen's Compensation Act gives an option to the injured person either to claim compensation under the said enactment, or to go in for a civil suit for damages. Section 53 of the E.S.I. Act, however, now bars even a claim for damages under "any other law for the time being in force or otherwise". In the case of an insured person, therefore, there seems to be a clear intention to exclude every other type of claim. The amendments clearly indicate, as observed by the Punjab High Court in the decision noticed, that the primary liability to meet compensation claim in respect of employment injuries is now on the E.S.I. Corporation, in terms of the provisions of the E.S.I. Act. with an express exclusion of claims under other enactments "or otherwise".

6. We are, therefore, constrained to hold that where a workman is an "insured person" under the coverage of the E.S.I. Scheme, no compensation could be claimed from his employer under Workmen's Compensation Act, in respect of employment injuries sustained by him. The result may be unfortunate for the

2nd respondent in this case, who was ill advised not to press the insurance claim preferred in January, 1980. We were, however, told at the hearing that part of the amount awarded by the W.C. Commissioner has already been received or withdrawn; and that gives some satisfaction, if satisfaction has anything to do with interpretation of statutes. The appeal is accordingly allowed, and the order of the Workmen's Compensation Commissioner is set aside, without any order as to costs.