

(1983) 12 KAR CK 0017
In the Karnataka High Court

Annapurna and Others

APPELLANT

Vs

Karnataka State Road Transport and Others

RESPONDENT

Date of Decision : 13-12-1983

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (8), 51 (c), 61

Citation : (1984) 2 ACC 268 : (1984) ACJ 238

Hon'ble Judges : R.S. Mahendra, J;G.N. Sabhahit, J

Bench : Division Bench

Judgement

Sabhahit, J.

1.This appeal by the claimants is directed against the judgment and award dated 21-3-1980, made by the Claims Tribunal, Dharwar in Misc. MVC No. 13 of 1979, on its file, dismissing the claim petition on the ground that it is barred by the provisions of Section 61 of the Employees"State Insurance Act.

2. One Mr. Veerabhadraiah died as a result of the injuries sustained by him when a bus belonging to the Karnataka State Road Transport Corporation was driven carelessly by the driver thereof, inside the depot of the said Corporation, Hubli, on 15th day of July 1978. The deceased was present there in the course of his employment and the accident happened in the premises of the depot. His legal heirs viz., his widow and children claimed compensation of Rs. 1,00,000/- from the respondents. Respondent No. 1 is the General Manager, K.S.R.T.C., respondent No. 2 is the driver and respondent No. 3 is the Self Insurance Fund of the K.S.R.T.C. The respondents resisted the claim on the ground that such claim for compensation is not available to the claimants in view of the provisions of Section 61 of the Employees" State Insurance Act, (hereinafter referred to as "the Act). The became the subject matter of issue No. 4 before the Tribunal. The Tribunal upheld the contention and rejected the claim. Aggrieved by the said judgment, the claimants have come up in appeal before this Court.

3. The learned Counsel appearing for the claimants appellants strenuously urged

before us that Section 61 of the Act is no bar to the claim made before the Motor Accidents Claims Tribunal. He relied on the decision of this Court in *Hindustan Aeronautics v. P. Venn*, wherein it is held that the claimant was not debarred from filing an application under Motor Vehicle Act, before the Tribunal, in view of the provisions of Section 61 of the Act, as the claim arises out of torts. The learned Counsel appearing for the other side, however, invited our attention to a decision of this Court reported in *Deputy General Manager, K.S.R.T.C. v. Gopal Mudaliar*, wherein this Court has specifically held that Section 53 of the Act is a bar to claim compensation if the cause of action arose as a result of employment injury.

4. The sole point, therefore, that arises for our consideration in this case is; whether Section 53 of the Act is a bar to claim compensation on the facts of this case.

5. It is not in dispute that the deceased was an employee and he was injured. It is further not in dispute that the deceased sustained injuries in the course of his employment and the injury could be termed as employment injury. The next question is whether the provisions of Section 53 of the Act are attracted when the dependents of the deceased compensation. Section 53 of the Act reads:

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.

6. The learned Counsel for the appellants invited our attention to the fact that an insured person would not be entitled to receive or recover compensation in respect of employment injury. He invited our attention to the definition of the term "Employment injury" in Section 2(8) of the Act, which states:

Employment injury means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.

Thus he stated that Section 53 of the Act applies only to personal injuries caused in the course of the employment and that it would not cover the case of death. But, the learned Counsel for the other side invited our attention to the fact that Section 53 of the Act speaks of an insured person or his dependents which by necessary implications means that the section covers even a case of death due to employment injury because it is only then that the dependents can claim compensation.

7. The learned Counsel for the other side also invited our attention to Section 52

of the Act which states:

52 Dependents" benefit : (1) If an insured person dies as a result of an employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependents" benefit shall be payable in accordance with the provisions of the First Schedule to his dependents specified in Sub-clause (i) and Sub-clause (ii) of Clause (6-A) of Section 2.

Hence, benefits to the dependents are contemplated only when the person dies as a result of employment injury. Therefore, by necessary implication, it is clear that Section 53 of the Act comes in when a person claims damages on account of employment injury or when his dependents claim benefits as a result of death of an employee as a result of employment injury.

8. That is the view taken by this Court in K.S. Vasantha and Others Vs. Karnataka State Road Transport Corporation, wherein it is ruled that reading of Section 2(8) along with Section 51 (c) of the Act, the injuries sustained and the death of the two persons was nothing but employment injury and that the remedy open to the injured and the legal representatives of the deceased was to approach the E.S.I. Corporation constituted under the E.S.I. Act and not the Tribunal constituted under the Motor Vehicles Act or under any other law for the time being in force including common law right under the Law of Torts. It is further held that the other remedies are barred u/s 53 of the E.S.I. Act. That being so, it is obvious that the final decision of the Tribunal has to be upheld.

9. In the result, we are constrained to hold that the appeal is devoid of merits and is liable to be dismissed. We dismiss the same. No costs of this appeal.