

(1982) 06 KAR CK 0002
In the Karnataka High Court
Case No : M.F.A. No. 2083 of 1980

Dy. General Manager, Karnataka State Road Transport Corporation

APPELLANT

Vs

Gopal Mudaliar and Others

RESPONDENT

Date of Decision : 11-06-1982

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (8), 53

Citation : (1983) ACJ 128 : (1982) 2 KarLJ 535 : (1983) 1 LLJ 340

Hon'ble Judges : G.N. Sabhahit, J;A.K. Laxshmeshwar, J

Bench : Division Bench

Judgement

Sabhahit, J.—This appeal by the Karnataka State Transport Corporation is directed against the judgment and award dated 25.9.1980 passed by the Member, MAC Tribunal, Hassan, in Misc. (MVC) case No. 20 of 1979, on his file, awarding compensation of Rs. 45,606 to the claimants, along with interest at 6% p.a. from the date of petition till payment as also the costs of the claimants before the Tribunal.

2. The Karnataka State Road Transport Corporation, the owner of the vehicles in question, has come up in appeal. The learned counsel appearing for the Karnataka State Road Transport Corporation strenuously urged before us that the claimants ought to have approached the Employees' Insurance Corporation for compensation, instead of approaching the Motor Accidents Claims Tribunals. He further submitted that the compensation awarded was very much on the higher side. They are, therefore, the two points that arise for our consideration in this appeal.

3. It is no doubt true that this Court has ruled that if the claimant has to receive benefits or compensation under S. 53 of the Employees' State Insurance Act, 1948, he cannot claim compensation under S. 110A of the Motor Vehicles Act, 1939.

4. Section 53 of the Employees' State Insurance Act, 1948, 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 employer under this Act."

Thus, it is obvious that for the application of this section, two conditions are necessary, viz., (i) that the person must have sustained employment injury and (ii) that he must have been insured under the Employees' State Insurance Act.

What is employment injury is defined under S. 2(8) of the Employees' State Insurance Act, 1948. It reads :

"`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."

5. A motor accident, when the workman was going on a bicycle, cannot be considered as an employment injury. We are not even sure whether he was insured under Employees' State Insurance Scheme. That being so, it is obvious that S. 53 of the Employees' State Insurance Act, 1948, would not bar the remedy in this case under S. 110A of the Motor Vehicles Act, 1939. We record our finding accordingly.

6. Regarding the quantum of compensation, it is in evidence that the deceased was aged about 35 years at the time of his death by accident and that he was getting a salary of Rs. 471 per month at the time of his death. He had prospects of betterment. In that view, the Tribunal had fixed the loss of dependency was fixed at Rs. 240 per month and the annual loss of dependency was fixed at Rs. 2,880. The Tribunal has taken the multiplier "15", which is challenged as very much on the higher side. The Tribunal has also awarded Rs. 3,000 for loss of consortium, Rs. 5,000 towards loss to the estate of the deceased and Rs. 6,000, a lumpsum, for loss of future prospects of the deceased and it has deducted half the insurance benefit and has arrived at Rs. 45,800 as total compensation.

7. It is true that the multiplier taken at "15" is on the higher side. In view of the rate of interest that was prevailing in the Society in 1979 and the age of the deceased, we fix the multiplier "12". Therefore, the loss of dependency would work out at Rs. 34,560. To this has to be added Rs. 5,000 towards loss to the estate of the deceased, Rs. 3,000 towards loss of consortium and Rs. 6,000 towards loss of future prospects of the deceased. That works out Rs. 48,560 and if we deduct 1/3rd of the insurance benefit viz., Rs. 4,000 approximately, what remains is Rs. 44,560 and what is awarded by the Tribunal is Rs. 45,606.

8. It is a settled principle of law that the Appellate Court would not disturb the figure is within the margin of discretion. It is so in this case. Hence, we are not inclined to disturb the quantum of compensation awarded by the Tribunal.

9. In the result, therefore, the appeal fails and is dismissed.

10. No costs of this appeal.