
(1977) 11 KL CK 0003
In the High Court Of Kerala
Case No : A.S. No. 493 of 1973

Employees" State Insurance Corporation	APPELLANT
Vs	
Krishnaswamy Gowder and Another	RESPONDENT

Date of Decision : 11-11-1977

Acts Referred:

Employees State Insurance (Amendment) Act, 1966 — Section 32, 43
Employees State Insurance Act, 1948 — Section 29, 66, 67, 75(2)

Citation : (1977) 11 KL CK 0003

Hon'ble Judges : V. Balakrishna Eradi, J;K.K. Narendran, J

Bench : Division Bench

Advocate : Ratna Singh and K. Prabhakaran, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Eradi, J.—The Employees" State Insurance Corporation, Trichur has preferred this appeal against the decision of the Subordinate Judge, Parur dismissing the suit O.S. No. 62 of 1969 which the Corporation had instituted against the Respondents herein for the recovery of an amount of Rs. 16,766.75 from them by way of indemnification u/s 67 of the Employees" State Insurance Act, 1948 (hereinafter referred to as the Act). The suit was dismissed by the court below on the ground that the civil court had no jurisdiction to entertain and try the suit. The correctness of the said view is called in question in this appeal.

2. The Mathrubhumi Printing and Publishing Co., Ltd. is a factory covered under the Act. An autorickshaw bearing registration No. K.L.D. 4902 belonging to the said company which was being used for delivery and distribution of the Mathrubhumi daily newspaper was involved in a road accident on 27th October 1966 at a place called Desom near Always at about 4.30 a.m. A lorry bearing registration No. M.D.E. 9454 owned by the 1st Defendant (1st Respondent) which was being driven by the 2nd Defendant (second Respondent) collided with autorickshaw and as a result thereof the driver of the autorickshaw -- Raman

Nair -- was killed on the spot. According to the Plaintiff Appellant -- the accident had occurred as a result of the rash and negligent act of the driver of the lorry and consequently the 1st Defendant is legally liable to pay compensation for the death of Raman Nair. Inasmuch as the fatal injury was suffered by Raman Nair during the course of and arising out of the employment under the insured company the Corporation became statutorily bound to compensate the dependents of the deceased under the Act and accordingly it has been making periodical payments to the Defendants as prescribed in the Act and the Rules after assessing the total compensation amount on the basis of the wages that were being received by the deceased at the time of the accident. The Corporation contended in the suit that u/s 67 of the Act it is entitled to be indemnified by Defendants Nos. 1 and 2 who are the persons legally liable to pay compensation or damages under the law for the fatal injury sustained by deceased Raman Nair.

Section 67 of the Act was in the following terms:

Where an insured person is entitled to receive or to recover (but has not received or recovered), whether from his employer or any other person, compensation or damages under any law for the time being in force in respect of any employment injury caused under circumstances creating a legal liability in some person other than the employer or his agent, the Corporation shall be entitled to be indemnified by the person so liable:

Provided that the Corporation shall not be entitled to be indemnified by an employer who has paid contributions in respect of the employee sustaining the employment injury as an employee under this Act, except in cases covered by Section 66.

The method of enforcement of the right conferred by the above section was prescribed by Section 75, Sub-section (2) Clause (c) which also we shall extract.

75(2). The following claims shall be decided, by the Employees' Insurance Court, namely:

* * *

(c) claim u/s 66 or 67 made by the Corporation against the employer or other person liable thereunder;

Section 67 of the Act was omitted from the statute with effect from 17th June 1967 by Section 29 of the Employees' State Insurance (Amendment) Act, 1966 -- Act 44 of 1966 (hereinafter called the amending Act). By Section 32(b)(ii) of the amending Act Clause (c) of Section 75(2) was omitted from the principal Act. This provision of the amending Act was, however, brought into force only with effect from 28th January 1968. Section 43 of the amending Act contains a saving provision in respect of certain types of pending proceedings. That section reads:

No provision of this Act shall apply to and in relation to any payment which has been, or is being, or is required to be, made under the principal Act in respect of

any employment injury sustained by an employee in any State or part thereof at any time before the date of the coming into operation of that provision and any such payment and any application, appeal or other proceeding for or relating to such payment pending before any authority immediately before such date shall continue to be governed by the provisions of the principal Act as they stood immediately before that date.

The effect of Section 43 of the amending Act is only to exclude from the operation of the provisions of the amending Act, payments made or required to be made, in respect of employment injuries sustained by an employee prior to the date of commencement of the concerned provision of the amending Act. It is stated in Section 43 that, applications, appeals or other proceedings relating to such payment, pending before any authority, immediately before such date, are to be disposed of under the provisions of the Act as it stood before the amendment. In the present case, the employment injury was sustained by the employee of the insured on 27th October 1966, at a time when Section 67 of the Act was available in the Act. Section 67 as well as Section 75(2) then formed part of the Act. The Appellant did not, however, take advantage of those provisions by preferring a claim u/s 67 before the Employees' Insurance Court as provided in Section 75(2)(c). As already noted Section 67 of the Act was repealed with effect from 17th June 1967. It may be that, notwithstanding the said repeal, the vested right that had accrued to the Appellant u/s 66 to be indemnified by the person other than the employer continued to be available to it. But the mode of enforcement of that right was only by preferring a claim before the Employees' Insurance Court u/s 75(2)(c). However, Clause (c) of Sub-section (2) of Section 75 was also subsequently repealed with effect from 28th January 1968. We are not called upon to consider the question whether, notwithstanding the said repeal of Section 75(2)(c), the Employees' Insurance Court should be deemed to continue to be vested jurisdiction to entertain claims in respect of employment injuries that had been sustained prior to 17th June 1967, with effect from which date alone Section 67 stood omitted from the statute. However that may be, we cannot see our way to accede to the contention put forward by the Appellant that, because of the repeal of Section 75(2)(c) the Corporation has derived a right to institute a suit in the ordinary Civil Court for enforcement of the right which had become vested in him u/s 67 of the Act prior to the date of commencement of that section. Since the right which was vested in the Appellant was only one to institute a claim before the Employees' Insurance Court u/s 67 read with Section 75(2)(c) we fail to see how, as a consequence of the repeal of Section 75(2)(c), the Appellant gets a cause of action to institute a suit before the Civil Court for adjudicating upon or enforcing the claim u/s 67. Where, by the terms of the statute, a right which is not available under the ordinary law, has been newly created, and the statute also prescribes the manner in which, or, the procedure by which, the said right can be enforced, the person seeking to enforce such right has to resort only to the remedy indicated by the statute, and the ordinary jurisdiction of the Civil

Court cannot be invoked for the said purpose. This principle, which is well established, is clearly applicable in the present case.

In the light of the foregoing discussion, we hold that the lower court was perfectly right in dismissing the suit on the ground that it had no jurisdiction to entertain it. The appeal is, accordingly, dismissed. The parties will bear their respective costs.