
(1994) 07 BOM CK 0078
In the Bombay High Court
Case No : First Appeal No. 542 of 1983

Employees State Insurance Corporation	APPELLANT
Vs	
Sayeeda Khatoon Danawalla and Others	RESPONDENT

Date of Decision : 14-07-1994

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(8), 52, 52(1), 53, 61

Citation : (1995) 2 ACC 587 : (1995) ACJ 1087 : (1995) 1 BomCR 94 : (1994) 96 BOMLR 49 : (1995) 1 LLJ 173 : (1995) 1 MhLj 865

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Judgement

D.R. Dhanuka, J

1. The Employee State Insurance Corporation has preferred this appeal against order dated 27th July 1982 passed by Employees' Insurance Court, Bombay, in Application (ESI) No. 60 of 1980. By the impugned order, the Employees' Insurance Court allowed the above referred application and directed the appellant Corporation to pay the dependents benefits to the Original applicants in accordance with the provisions contained in Section 52 of the Employees' State Insurance Act read with First Schedule to the Act.

2. One Mr. M. A. Danawala (the insured person) was employed at the time of his death in Kandivli factory of Mahindra and Mahindra Limited which was duly covered under the provision of the Employees' State Insurance Act, 1948. Mr. M. A. Danawala is hereinafter referred to as the deceased. While the deceased was standing in the queue waiting for the bus provided by his employers through the contractors for joining duty, the deceased was run over by the bus. The deceased thus met with an accident.

The deceased died. The deceased was under an obligation to travel by the above referred bus in view of the arrangements having been made by his employers for the employees to pick up the employees through the contractors concerned.

3. As result of the said accident, the deceased died on 11th August, 1976. On 5th November 1976, the applicants being the dependants of the deceased made an application to the appellant Corporation for the "dependants benefits" claimable u/s 52 of the act read with First Schedule thereto. On 29th October 1977, the Corporation rejected the claim of the applicants. On 25th March 1980, the original applicants made the above referred application as contemplated u/s 75 of the Act for a direction to the Corporation to pay to the original applicants "the dependants benefits" as contemplated u/s 52 of the Act. By the impugned order dated 27th July 1982, the Employees" Insurance Corporation granted the said application.

4. Before I discuss the contentions urged at the Bar on behalf of the appellant. It is necessary to state that the applicants had also made a claim against the employers" contractors and New India Assurance Company Limited for compensation before the Motor Accident Claims Tribunal. On 26th February 1980, a settlement award was made in the said proceeding before the Motor Accident Claims Tribunal whereunder a sum of Rs. 42,500/- was paid as compensation to the applicants. The said award was made by the Motor Accident Claims Tribunal against the transport company as well as against the New India Assurance Company Limited. In all probability, the New India Assurance Company Limited must have paid the said amount to the applicants.

5. It was contended on behalf of the appellants Corporation before the Employees" Insurance Court that the above referred application made by the dependents of the deceased was barred by law of limitation. I do not appreciate raising of such technical contention by a Corporation constituted for fulfilling of constitutional goals. But that apart, there is no merit in this contention. It is not disputed that the Court has power to condone alleged delay, if any in filing of the application for "dependents benefit" by the dependants of the deceased. The learned counsel has submitted that the original applicants ought to have preferred the application before the Employees Insurance Court within three years from the date of the accident. The learned counsel for the respondents point out that the said application was made within three years from the date of rejection of the application for benefits by the appellant. The respondents point out that the Corporation rejected the claim of the applicants for the first time on 29th October, 1977. It is not necessary to decide this controversy in this case although the respondents appear to be right in their contention urged at the bar. I have no hesitation in condoning the delay, if any, in filing the said application.

6. The learned counsel for the appellant has then contended that the appellant is not bound to make payment of dependants benefit u/s 52 of the Act in view of the respondents having obtained payment of Rs. 42,500/- under settlement award dated 26th February 1980 passed by the Motor Accident Claims Tribunal referred to hereinabove. The learned counsel for the appellant has invited the attention of the Court to the provisions contained in sections 53 and 61 of the Employees" State Insurance Act, 1948. I have carefully gone through the said

provisions. If an insured person or his dependants are entitled to receive or recover certain amounts from his employer or the Corporation, the insured person or his dependants may not be entitled to receive or recover compensation or damages under any other Act. It is nowhere laid down in the Act that if an insured person or his dependants recover or realise any amount by way of compensation or damages from the transport company or the insurance company under the Motor Vehicles Act 1939, such insured person shall not be entitled to claim the statutory benefit payable u/s 52 of the Act. The appellant Corporation is under a statutory obligation to make the necessary payment u/s 52 of the Act if the conditions prescribed by the said Section are satisfied. The appellant Corporation is not absolved from making the payment of the amount payable u/s 52 of the Act merely because the respondents have recovered or realised compensation or damages from someone else under some other Act. For the purpose of appreciating this aspect of the controversy, a reference in the passing may be made to the provisions contained in Section 110-AA of Motor Vehicles Act, 1939 incorporated in the said Act by Act 56 of 1969. The said provisions read as under :-

"110-AA. Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923), where the death 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, 1923 (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) ".

Thus, the said section requires the workman to exercise an option for claiming compensation under Motor Vehicles Act, 1939 or under the workmen's Compensation Act, 1923. The said Section in terms provides that if the workman is entitled to recover compensation under both the acts, the workman shall not resort to double recovery and the workman or his dependants shall have to exercise an option in this behalf for making a claim for compensation either under the Motor Vehicles Act or under the Workmen's Compensation Act, 1923. In the Employees State Insurance Act, 1948, there is no such provision. The Court has no power to legislate. It is not possible to hold that the appellant Corporation is absolved from its obligation to make payment of "dependants benefits" in accordance with Section 52(1) of the Act read with First Schedule thereto merely because the respondent have recovered the above referred amount of compensation in the proceedings initiated by them before the Motor Accident Claims Tribunal. Section 53 and 61 of the Act do not affect the statutory liability of the appellant to make payment to dependants of deceased as discussed above.

7. The learned counsel for the appellant has submitted that the deceased did not suffer "an employment injury" within the meaning of the said expression as defined in section 2(8) of Act 30 of 1948. The learned counsel for the appellant has invited the attention of the Court to the ratio of the judgment of the

Supreme Court in the case of Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others, and the judgment of Supreme Court in the case of General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes, . In my opinion, the trial Court has rightly held that the doctrine of notional extension was applicable to the facts of this case. The deceased was standing in a bus queue waiting for the bus of the employer provided through the contractor for purpose of reaching the factory and the deceased was run over by the bus by which he was to travel. The doctrine of notional extension cannot be placed in straight jacket. It is merely a matter of sound common sense as to when and where and to what extent the said doctrine can be applied. Having regard to the facts of this case as found by the trial Court, I hold that the deceased died as a result of employment injury within meaning of Section 2(8) of the Act.

8. It must be stated in the passing that an appeal does not lie to this Court even if the appeal involves a mere question of law. Section 82(2) of the Act provides for a very restricted appeal against the order of the Employees' Insurance Court. An appeal filed in this court can be entertained only if the appeal involves a substantial question of law. The relevant principles of law are already laid down by the Supreme Court. Mere application of these principles to the facts in this case does not involve any substantial question of law.

9. In my opinion, there is no merit in this appeal. The appeal fails. The appeal is dismissed with costs.

10. The appellant Corporation is directed to make payment of the "dependants benefits" to be computed u/s 52 of the Act read with First Schedule thereto as directed above within 60 days from today. The said payment shall not be withheld on any ground whatsoever.

11. The Registrar, High Court, Bombay, is directed to return the record of the Court to the trial Court expeditiously.

12. Issue of certified copy expedited.