

**(2009) 06 AP CK 0021**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 2075 of 1999**

E.S.I. Corporation

APPELLANT

Vs

Commissioner for Workmen's Compensation and Assistant  
Commissioner of Labour and Others

RESPONDENT

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**Date of Decision : 18-06-2009**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Employees State Insurance Act, 1948 — Section 53, 76  
Workmens Compensation Act, 1923 — Section 3(1), 30

**Citation : (2010) 124 FLR 214 : (2010) 2 LLJ 263 : (2010) 5 SLR 797**

**Hon'ble Judges : Gopala Krishna Tamada, J**

**Bench : Single Bench**

**Advocate : B.G. Ravindra Reddy, for the Appellant; P. Sridhar Rao, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Gopala Krishna Tamada, J.—The Employees State Insurance Corporation represented by its Regional Director is the petitioner herein and it is assailing the order dated 30.5.1998 passed in W.C. No. 98 of 1996, whereby the first respondent herein while awarding compensation of an amount of Rs. 73,668/- to respondents 3 to 5 herein fixed up the said liability on the petitioner as well as the second respondent i.e., the employer, as arbitrary and illegal.

2. The brief facts are that one Kondareddi (hereinafter referred to as "the deceased") was working as machine operator in Zenith Granites (Pvt.) Limited, the 2nd respondent herein, and comes within the meaning of workman under the provisions of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act"). On 9.10.1994 after attending to his regular duties at 8. p.m., while he was going to the house situated within the campus of the second respondent, met with a live electrical wire and died on account of electrocution. In view of the death of the deceased, respondents 3 to 5, who are none other than the sons of

the deceased, approached the first respondent and filed WC No.98 of 1996 seeking total compensation of Rs. 1,25,000/- against the petitioner and the employer i.e., the second respondent. The petitioner corporation as well as the second respondent employer contested the same. However, the first respondent, holding that the said accident and death of the deceased was during the course of employment of the second respondent, awarded compensation of Rs. 73,668/- to respondents 3 to 5, As stated supra, assailing the said award, making it also liable, the petitioner approached this Court and filed the present writ petition.

3. The learned Standing counsel for the petitioner Corporation Mr. B.G. Ravindra Reddy mainly contended that the first respondent cannot fasten the liability or award of compensation against the petitioner Corporation in view of the strict prohibition provided for u/s 53 of the Employees' State Insurance Act, 1948. It is his further contention that it is clearly averred in the counter filed on behalf of the corporation that the deceased is not one of those insured persons to come within the provisions of the Employees' State Insurance Act and the first respondent without going into the said aspect awarded compensation as if the deceased was also an insured person and the petitioner corporation is also liable to pay the said amount of compensation along with the second respondent.

4. Though notices are served on the second respondent i.e., employer, nobody put in appearance on its behalf.

5. Learned Counsel for the unofficial respondents 3 to 5 contended that the respondents 3 to 5 are the only legal representatives of the deceased and in view of the sudden death of the deceased and as the bread winner of the family died in the accident, they were constrained to approach the first respondent and file the said Case claiming total compensation of Rs. 1,25,000/- and the first respondent taking all the facts and circumstances into consideration had awarded an amount of Rs. 73,668/- to which amount respondents 3 to 5 are rightly entitled, may be from the employer or from the petitioner corporation and as such the award under challenge need not be reversed or set aside. According to him, this writ petition is misconceived for the reason that the only remedy left open to the petitioner corporation is to approach this Court by way of an appeal as provided u/s 30 of the Workmen's Compensation Act but not by way of writ petition under Article 226 of the Constitution of India and only to avoid depositing of the amount of compensation awarded by the Commissioner under the Workmen's Compensation Act, the petitioner approached this Court and filed the writ petition under Article 226 of the Constitution of India instead of filing an appeal u/s 30 of the Workmen's Compensation Act.

6. The Workmen's Compensation Act was enacted by the legislature in the year 1923 with a view to provide for the payment by certain classes of employers to their workmen compensation for injury by accident. According to Section 3(1) of the Workmen's Compensation Act, which deals with employer's liability for compensation, if personal injuries caused to a workman in any accident arising out of and in the course of his employment, the employer shall be liable to pay

compensation in accordance with the provisions contained in the said Act.

7. The Employees' State Insurance Act was introduced in the year 1948 with the main object of introducing a scheme of health insurance for industrial workers. As per the scheme, compulsory State Insurance providing for certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with the work in factories is a must.

8. A comparison of the relevant provisions of the two Acts makes it clear that both are beneficial legislations and are enacted to provide for compensation to a workman/employee for personal injury caused to him by accident arising out of and in the course of employment. The Employees' State Insurance Act is a subsequent Act and is having a wider coverage and is more comprehensive. The very purpose of enacting Employees' State Insurance Act is to see that the workman in the case of personal injuries and death would get more compensation than what is provided for under the Workmen's Compensation Act. The, benefits, which an employee get, under the Employees' State Insurance Act are more substantial than the benefits which he get under the Workmen's Compensation Act.

9. When once a workman or employee is having insurance coverage, it is always desirous and advantageous to the said workman/employee to approach the Employees' State Insurance Court constituted, u/s 76 of the Employees' State Insurance Act, 1948 than to approach the Commissioner under the Workmen's Compensation Act for the limited compensation which will be awarded by the; Commissioner.

10. Keeping the above in mind, it appears the legislature thought it fit to bring a provision i.e., Section 53 of the Employees' State Insurance Act, providing bar against receiving or recovery of compensation or damages under any other law. The very purpose of providing such a bar is to see that the workman/employee gets more compensation and further he will be precluded from approaching both the authorities i.e., the Commissioner under the Workmen's Compensation Act and the Court constituted u/s 76 of the Employees' State Insurance Act, 1948. In this regard, it is necessary to refer to Section 53 of the Employees' State Insurance Act which reads as under:

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.

11. From the above provision of law, it is clear that when once an employee/workman is insured with the employer, he has no other go except to approach the Employees' State Insurance Court and he cannot approach the

Commissioner under the Workmen's Compensation Act. It is the specific case of the petitioner herein that insofar as the deceased is concerned, the employer, who is arrayed as second respondent herein, has not produced any evidence to establish that the deceased is one of those insured persons to come within the ambit of the provisions of the Employees' State Insurance Act, 1948. When it is the specific stand of the petitioner, either the employer i.e., the second respondent or respondents 3 to 5, who are the legal representatives of the deceased, shall place evidence before the Commissioner.

12. Keeping the above provisions of law in mind, when looked into the case, it is clear that respondents 3 to 5 approached the Commissioner appointed under Workmen's Compensation Act, but not the Court constituted under Employees' State Insurance Act. As per the above provisions of law, if the father of respondents 3 to 5 is a person insured and covered under the provisions of the Employees' State Insurance Act, then only the prohibition provided for u/s 53 of the Employees' State Insurance Act comes into operation. It shall be remembered that respondents 3 to 5, who are the sons of the deceased employee, cannot know as to whether the deceased was insured and covered under the "Employees' State Insurance Act.

13. When once the petitioner corporation has taken a specific stand that there is no coverage and the L.Rs. of the deceased need not be paid any compensation, it is for the employer i.e., the 2nd respondent (who has not chosen to appear before this Court) to establish the said fact as to whether the deceased is having coverage or not. It cannot be expected from respondents 3 to 5 for the reason that they cannot have any knowledge about the same, and hence, heavy duty is cast upon the 2nd respondent employer to produce evidence establishing the fact that the deceased is having coverage. Had it happened, in my considered view, the said case itself is not maintainable in view of the clear prohibition provided for u/s 53 of the Employees' State Insurance Act and the only remedy left open to respondents 3 to 5 is to approach the Court constituted under the Employees' State Insurance Act but not the Commissioner under the Workmen's Compensation Act.

14. When once there is no evidence establishing the fact that the deceased is having insurance coverage, in my considered view, respondents 3 to 5 are justified in approaching the Commissioner under the Workmen's Compensation Act. When once there is no coverage, in my considered view, the petitioner corporation cannot be added as the respondent and the Commissioner cannot simply state that the petitioner corporation is liable to pay the compensation jointly and severally along with the second respondent-employer.

15. As stated supra, the very purpose of enacting the Employees' State Insurance Act is to see that the workman/employee gets more compensation than the compensation provided for under the Workmen's Compensation Act. But however as there is no evidence establishing the insurance coverage, in my considered view, the 1st respondent erred in fixing up the liability on the

petitioner Corporation. In that view of the matter, this Court has no hesitation to come to the conclusion that the award passed by the first respondent in W.C. No. 98 of 1996 fixing up the liability on the petitioner Corporation, is wholly illegal and without jurisdiction. But however, awarding compensation and fixing up the said liability on the second respondent-employer is concerned, it can definitely be said that the first respondent is perfectly justified.

16. Accordingly, the writ petition is allowed and the award passed by the first respondent in W.C. No. 98/1996 is hereby set aside only to the extent of fixing up the liability of payment of compensation on the petitioner i.e., Employees' State Insurance Corporation along with the 2nd respondent employer. It is needless to observe that the 2nd respondent employer only shall pay the amount of compensation awarded by the first respondent and respondents 3 to 5 may proceed against them to execute the award, in accordance with law. There shall be no order as to costs.