

(2002) 01 KL CK 0042
In the High Court Of Kerala
Case No : M.F.A. No. 1353 of 1996

E.S.I. Corporation

APPELLANT

Vs

Sasi

RESPONDENT

Date of Decision : 16-01-2002

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(8), 46(C)

Citation : (2003) 2 ACC 97 : (2002) ACJ 2097 : (2002) 93 FLR 501 : (2002) 1 ILR (Ker) 443 : (2002) 1 KLJ 190

Hon'ble Judges : A. Lekshmikutty, J

Bench : Single Bench

Advocate : P. Sankarankutty Nair, for the Appellant;

Final Decision : Allowed

Judgement

A. Lekshmikutty, J.—Challenging the judgment in I.C. No. 75 of 1993 on the file of the Employees' Insurance Court, Alappuzha, this appeal is preferred by the opposite party. The respondent is an employee covered under the E.S.I. Act with insurance No. 54-1678138. The appellant received an accident report from the employer of the respondent reporting that on 21.11.1992 at 7.45 A.M. while the respondent was returning to his house after the right shift, he was assaulted by some persons near the bus stop adjacent to the factory. Investigation conducted by the appellant revealed that the respondent was assaulted by some one on account of person vengeance. The appellant sustained injury on his left hand and he claimed the benefits admissible for employment injury as defined u/s 2(8) of the E.S.I. Act. The employment injury is denied by the appellant. It was only an assault by a stranger out side the premises of the factory and not arose out of employment.

2. The respondent challenged the decision of the appellant before the E.I. Court and the E.I Court without appreciating the evidence in its right perspective found that the respondent is entitled to get all the benefits u/s 46(c) of the E.S.I. Act. This decision of the E.I. Court is challenged in this appeal.

3. The only question to be considered is whether the injury sustained by the employee is an employment injury as defined u/s 2(8) of the E.S. I. Act. The allegation of the respondent is that he sustained injury while he was returning to his house after his night shift in the factory on 21.11.1992 at 7.45 A.M. As per the respondent, the incident occurred near the bus stop adjacent to the factory. He was assaulted by some persons and as a result, he sustained injury. The contention of the appellant is that this is not a employment injury as defined u/s 2(8) of the Act. "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. PWs. 1 and 2 were examined on the side of the applicant. According to PW1, he was waiting at the bus stop near the factory after his work. Two persons came and asked him whether his name is Sasi. As per PW.1, in the establishment in which he was working, there is another person by name Sasikumar who is also called as Sasi. he was assaulted by the person on the misunderstanding that he was the said Sasikumar working in the same establishment. The assault was not in pursuance of any quarrel between himself and the assailants. According to him, since at the time of incident he was proceeding to home after employment, the injury sustained by him can only be treated as employment injury. PW.2 is an employee of the same establishment. He gave evidence that there was some quarrel between himself and a passenger in the bus at the bus stop on the previous day. PW.1 was assaulted and caused injuries on the misunderstanding that he is the person who made quarrel with the passenger of the bus. Ext. D1 is the report of the E.S.I. Official who conducted the local investigation. Ext. B1 shows that there was some quarrel between the respondent herein and some other person on the previous day and on account of that enmity somebody assaulted him. According to the appellant, since the assault was at the bus stop, the injury caused by strangers could not be treated as an employment injury. The definition of an employment injury in Section 2(8) of the Employees' State Insurance Act, 1948 envisages a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment. Therefore the employee, in order to succeed in this case, will have to prove that the injury that he had suffered arose out of and was in the course of his employment. Both the conditions will have to be fulfilled before he could claim any benefit under the Act. Here, in the instant case, the respondent herein was assaulted at the bus stop while he was waiting for the bus to his house. So, it cannot be stated that the injury sustained to him due to the assault of some persons will come under the purview of the employment injury. The said injury caused to the respondent cannot be said to have arising out of employment, unless it can be shown that the employee was doing something incidental to his employment. The injury must be of such an extent as can be attributed to an accident or an occupational disease arising out of his employment. Out of his employment indicate that the injury must be caused by an accident which had its origin in the employment. The injury which he sustained due to the assault of

strangers on his way to his house cannot be said to have its origin in his employment in the factory. Unless an employee can establish that the injury was caused or had its origin in the employment, he cannot succeed in a claim based on Section 2(8) of the Act. The word accident arising out of employment indicate that any accident which occurred while doing to the place of employment or for the purpose of employment in the instant case, there is no connection between the accident and the employment. The accident must take place within or during the period of employment. Therefore, the Insurance Court was not justified in awarding the benefit u/s 46(C) of the E.S.I. Act. Hence, I am constrained to set aside the impugned order and the application filed by the respondent herein is dismissed. The appeal is allowed.