
(1981) 12 KAR CK 0002
In the Karnataka High Court
Case No : M.F.A. No. 1846 of 1981

G.N. Vishwanath and Another

APPELLANT

Vs

Andal and Others

RESPONDENT

Date of Decision : 10-12-1981

Acts Referred:

Employees State Insurance Act, 1948 — Section 53, 61
Motor Vehicles Act, 1988 — Section 110 A

Citation : (1982) ACJ 128

Hon'ble Judges : Sabhahit, J;A.K. Laxmeshwar, J

Bench : Division Bench

Advocate : O. Mahesh, for the Appellant; V. Markande Gowda, for the Respondent

Final Decision : Dismissed

Judgement

Sabhahit, J.—This appeal by the owner and the insurer of the vehicle in question is directed against the judgment and award dated 5.12.1980 passed by the Claims Tribunal, Bangalore City in M.V.C. No. 156/80 on its file, awarding compensation of Rs. 50,000 to claimants for the death of Narotham an employee under the M.E.I., getting a monthly salary of Rs. 611 and aged about 46 years at the time of his death.

2. The sole point urged before us in this appeal is that the claimants received compensation from E.S.I. and as such under Sections 53 and 61 of the Employees' State Insurance Act, (hereinafter referred as "the E.S.I. Act") the present petition for compensation u/s 110-A of the Motor Vehicles Act is not tenable.

3. Section 53 of the E.S.I. Act reads:

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, 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.

Thus, it is clear that it is only in the case of an employment injury sustained by the insured person that Section 53 of the E.S.I. Act comes into play. But, the facts of the present case reveal that the victim met with an accident when he was going on his bicycle on the public road. It is not averred that it is an employment injury and Section 53 of the E.S.I. Act is attracted.

Section 61 of the E.S.I. Act reads:

When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

4. The evidence on record does not reveal that he received any benefits under the E.S.I. Act. Moreover, this Court has held that the section would not bar a petition filed u/s 110-A of the Motor -Vehicles Act as the compensation awarded therein is under torts and not under an enactment. That being so, we are constrained to hold that there is no substance in the contention that the petition u/s 110-A of the Motor Vehicles Act for compensation is barred either by Section 53 or Section 61 of the E.S.I. Act. Hence, the appeal fails and is dismissed. No other point was pressed for our consideration. No costs.