

(1998) 11 KAR CK 0070

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2373 of 1990

H.G. Mahesh

APPELLANT

Vs

Smt. Honnamma and Another

RESPONDENT

Date of Decision : 25-11-1998

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (8), 46, 53, 61
Motor Vehicles Act, 1939 — Section 110 A

Citation : (2000) ACJ 753 : (1999) ILR (Kar) 1548 : (1999) 6 KarLJ 382

Hon'ble Judges : N.S. Veerabhadraiah, J

Bench : Single Bench

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

Judgement

1. This is the claimant's appeal being aggrieved of the dismissal of the claim in MVC No. 1369 of 1987 on the file of the Claims Tribunal, Bangalore City.

2. The brief facts of the case are as follows:

The injured H.G. Mahesh, while he was proceeding on his Luna bearing Regn. No. CKD 566 at about 7.00 p.m. on 22-6-1987 towards his house and reached near N.T.T.F. Bus stop on Peenya Road that a Tempo bearing Regn. No. CAA 695 came driven at a high speed in a rash and negligent manner and dashed, as a result, he sustained with fracture injuries. Due to the injuries suffered in the road accident, he presented a claim petition before the Claims Tribunal, Bangalore City claiming compensation of Rs. 1,00,000/-.

3. Respondent 1, the owner of the Tempo filed objections stating that the vehicle has been insured with New India Assurance Company Limited, and the policy is valid as on the date of the accident and denied all other averments which are inconsistent with the objections statement and prayed to dismiss the claim petition.

4. Respondent 2-M/s. New India Assurance Company Limited filed a detailed

objections statement contending that the policy was subsisting as on the date of the accident. The compensation claimed is highly excessive and exorbitant and denied all other averments which are inconsistent with the objections statement and prayed to dismiss the claim petition.

5. The Claims Tribunal framed the following issues:

1. Does petitioner prove that he sustained injuries in a motor accident which took place on 22-6-1987 at about 7 p.m. near N.T.T.F. Bus Stop, Peenya Road, Bangalore as a result of rash and negligent driving of the Tempo bearing Regn. No. CAA 695?

2. Does 2nd respondent prove that accident was the result of negligent driving of Luna bearing No. CKD 566 by the petitioner himself?

3. Is the petitioner entitled for compensation? If so, to what amount and from whom?

4. What order?

6. The petitioner examined P.Ws. 1 and 2 and produced Exts. P. 1 to P. 23 whereas the respondent examined R.W. 1 and produced Ext. R. 1 and Ext. R. 1(a).

7. The Claims Tribunal, considering the evidence of the injured and also the police records Exts. P. 1 to P. 3 held that the accident resulted on account of the rash and negligent driving of the Tempo in question. Accordingly, answered Issue No. 1 in the affirmative and Issue No. 2 in the negative. The Claims Tribunal having determined the compensation payable at Rs. 17,806-65 ps., dismissed the claim on the ground that the petitioner has availed the benefit under the Employees' State Insurance Act and the petitioner has been covered by the said Act and therefore, he is not entitled for the benefit under the Motor Vehicles Act, The injured, being aggrieved of the dismissal of the Claim Petition and also the finding of the Tribunal has come up with this appeal.

8. The learned Advocate Sri V. Markande Gowda firstly contended that in a road accident that took place on 22-6-1987 between the petitioner's Luna and the Tempo of the respondent, the injured has suffered injuries. That the accident in question has taken place near N.T.T.F. Bus Stop on Peenya Road, Bangalore which is unconnected with his employment and under the provisions of the Motor Vehicles Act, the petitioner presented a claim petition u/s 110-A of the Motor Vehicles Act claiming compensation on account of the injuries suffered. That though it was not the case of the petitioner, he suffered an employment injury and the respondents have not taken such plea in their objections statement, filed, but only on the basis of Ext. P. 21, the leave availed by the petitioner from his employer, that the Claims Tribunal has come to an erroneous conclusion that the petition under the Motor Vehicles Act is not maintainable and the further finding of the Claims Tribunal that he is only entitled for the benefit under the E.S.I. Act is erroneous and opposed to principles of law and therefore, prayed to

allow the appeal by setting aside the finding of the Claims Tribunal and to award compensation.

9. Learned Counsel for the respondent-Insurance Company, Sri O. Mahesh contended that the injured has availed the E.S.I. benefit and once the injured were to avail the benefit under the E.S.I. Act, it is deemed to be an employment injury and by virtue of Sections 46, 53 and 61 of the Employees' State Insurance Act, the claimant is precluded from claiming compensation under the Motor Vehicles Act and in support of his contentions relied on the decisions in *A. Trehan Vs. M/s. Associated Electrical Agencies* and another, and also in the decision in *Western India Plywood Limited Vs. P. Ashokan*, and submitted that where the workman has availed the benefit under the E.S.I. Act, to claim any other relief either under the Motor Vehicles Act or under the Workmen's Compensation Act is precluded. Therefore, the impugned order passed by the Claims Tribunal dismissing the claim does not call for interference. Accordingly, prayed to dismiss the appeal.

10. In the light of the submissions, the important question of law that arises for consideration is:

"Whether the injuries suffered by the claimant does come within the meaning of employment injury and thereby precluded from claiming compensation under the Motor Vehicles Act or the claimant is entitled only for the benefit under the E.S.I. Act?"

11. In order to adjudicate the matter, it is necessary to appreciate the pleadings of the claim petition and objections statement as well as the evidence available on record.

12. In the claim petition, the injured has specifically pleaded that he has suffered injuries on account of the accident that took place on 22-6-1987 near N.T.T.F. Bus Stop on Peenya Road due to the rash and negligent driving of the Tempo bearing Regn. No. CAA 695 in question. What he has stated is, "the petitioner is a technical employee in Glastronics Factory. Due to the accident and because of the severe injuries sustained by him due to his pain and suffering, he could not attend his factory for about 3 months and thereby, he lost salary during this period".

13. From the reading of the claim petition filed u/s 110-A of the Motor Vehicles Act, it is clear that the road accident suffered by him was unconnected with his employment. The owner of the vehicle, in her objections statement filed on 20-11-1989 has nowhere pleaded that the accident that happened was in the course of and arose out of the employment, except pleading that the accident was not due to any rash and negligent driving of the Tempo etc. Similarly, in the objections statement filed by the Insurance Company also, it is nowhere pleaded that there was any nexus between the accident and his employment. Thus, from the very pleadings of the claimant and the respondents, it is clear that the accident which took place on 22-6-1987 is in no way connected with the

employment.

14. Now coming to the evidence of the injured, in his evidence he has stated thus:

"On 22-6-1987 at 7 p.m. I was proceeding on my Luna No. CKV 566 from West to East on Peenya Road. When I reached near NTTF Bus Stop, from Cross Road a Tempo bearing No CAA 695 came from North to South. When I had crossed almost 3/4th of the cross road, the Tempo came and dashed on my left side. I fell along with the Luna towards right side".

Thus the evidence of the injured makes it clear that the accident had nothing to do with his employment.

15. Section 110-A of the Motor Vehicles Act, 1939 reads thus:

"An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 110 may be made:

(a) by the person who has sustained the injury; or

(aa) by the owner of the property; or

(b) where death has resulted from the accident (by all or any of the legal representatives) of the deceased or;

(c) by any agent duly authorised by the person injured (or all or any of the legal representatives) of the deceased as the case may be:

(Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.)

2. Every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed.

3. No application for compensation under "this section shall be entertained unless it is made within six months of the occurrence of the accident:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time".

A plain reading of the section makes it clear that in respect of the injury or death resulting or arising out of an accident enables the victim or the family of the victim to present a claim petition to claim compensation under the provisions of the Motor Vehicles Act. Therefore, the only course open to the claimant to claim compensation is under the provisions of the Motor Vehicles Act, 1939 by

presenting a petition u/s 110-A of the Act.

16. Now the question is, in view of the fact that the injured having availed the E.S.I. leave facility, that the injuries suffered come within the meaning of employment injury.

17. Section 2(8) of the Employees' State Insurance Act, 1948 reads thus:

" "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".

A reading of Section 2(8) makes it clear that if a workman were to suffer with any injury or resulting in his death arising out of and in the course of employment, then it comes within the meaning of employment injury.

18. Section 46 of the E.S.I. Act, 1948 reads thus:

"46. Benefits.--(1) Subject to the provisions of the Act, the insured persons (their dependants or the persons hereinafter mentioned, as the case may be) shall be entitled to the following benefits, namely,

(a) periodical payment to any insured person in case of his sickness certified by a duly appointed medical practitioner, or by any person possessing such qualifications and experience as the Corporation may, by regulations specify in this behalf (hereinafter referred to as sickness benefit);

(b) periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefits);

(c) periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit);

(d) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit);

(e) medical treatment for an attendance on insured persons (hereinafter referred to as medical benefit); and

(f) payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person, or where the insured person did not have a family or was not living with

his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as funeral expenses):

Provided that the amount of such payment shall not exceed (such amount as may be prescribed by the Central Government) and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow".

The workman who has been covered under the provisions of the E.S.I. Act is entitled to claim E.S.I. benefit in respect of the matter provided therein if he were to have suffered with any injury or resulting in death.

19. Section 46(e) provides for medical treatment for an attendance on insured persons and in case, if the injured person were to avail medical treatment also comes within the meaning of medical treatment as stated above.

20. Section 53 of the E.S.I. Act reads thus:

"53. Bar against receiving or recovery of compensation or damages under any other law.--An insured person or his dependants 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".

It is clear, in a case where workman had availed of any benefit contemplated u/s 46 of the E.S.I. Act, the workman is not entitled to claim compensation under the Workmen's Compensation Act or under any other law.

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

"61. Bar of benefits under other enactments.--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".

A reading of Section 61 makes it clear that if any benefit is availed under the provisions of the E.S.I. Act in respect of the injuries suffered, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment. This is the position of law as it stands.

22. Now in the light of the submissions of the learned Advocate, Sri O. Mahesh, whether the workman has availed any benefit under the E.S.I. Act, has to be considered.

23. Ext. P. 21, which is mainly relied upon reads thus:

"Certified that Sri H.G. Mahesh, an employee of our Company was on E.S.I. leave from 23-6-1987 to 17-8.-1987 (inclusive).

He was drawing emoluments as under during period.

Basic + D.A.

Rs. 550.00

C.A.

Rs. 150.00

Total

Rs. 700.00

He is drawing emoluments now as under from 1-1-1988.

Basic + D.A.

Rs. 575.00

C.A.

Rs. 175.00

Total

Rs. 750.00

Sd/- for Glastronix (K.T. Purushottaman)".

The certificate issued by the employer shows that the injured was on E.S.I. leave from 23-6-1987 to 17-9-1987. Except availing leave, he has not availed any other benefit. In view of the fact that the injured having suffered fracture injuries, it is quite natural that he has to necessarily avail leave for undergoing treatment and thereby even in his evidence has clearly stated that he was immobilised for a period of 3 months on account of the injuries suffered and therefore, he could not attend. The mere availing of leave does not amount to availing benefit u/s 46 of the E.S.I. Act.

24. However, the learned Counsel, Sri O. Mahesh relied on the decision in A. Trehan's case, supra. At para 12, it is stated as under:

"In this background and context, we have to consider the effect of the bar created by Section 53 of the ESI Act. Bar is against receiving or recovering any compensation or damages under the Workmen's Compensation Act or any other law for the time being in force or otherwise in respect of an employment injury. The bar is absolute as can be seen from the use of the words 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" and "under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force or otherwise". The words "employed by the legislature" are clear and unequivocal. When such a bar is created in clear and express terms, it would neither be permissible nor proper to infer a different intention by referring to the

previous history of the legislation. That would amount to bypassing the bar and defeating the object of the provision. In view of the clear language of the section, we find no justification in interpreting or construing it as not taking away the right of the workman who is an insured person and an employee under the ESI Act to claim compensation under the Workmen's Compensation Act. We are of the opinion that the High Court was right in holding that in view of the bar created by Section 53, the application for compensation filed by the appellant under the Workmen's Compensation Act was not maintainable".

The Apex Court clearly laid down the principles and wherever a workman has availed the benefit under the E.S.I. Act in respect of the injuries suffered in the course of and arising out of the employment, that such workman is precluded from availing the benefit under the other provisions of law.

25. In the decision *supra*, the appellant was employed with Associated Electrical Agencies for carrying out repairs of television sets. On 17-7-1987 while he was repairing a television set, a component of it burst and that caused an injury to his face. As a result thereof, he lost vision of the left eye wherein, the workman availed the benefit under the provisions of the E.S.I. Act. In that view of the matter, it is clearly laid down that the workman is not entitled to claim compensation under the Workmen's Compensation Act. There cannot be any dispute regarding the principles laid down and (sic) views in the matter. When once the employee has availed the benefit under the E.S.I. Act, he is precluded from claiming any other benefit under any other law. But in the case on hand, from the facts, it clearly evidences that firstly the injury suffered was not an employment injury arising out of his employment and the accident in question has taken place while he was on his way to his house. Therefore, there cannot be any nexus between the employment and the accident in question and in that view of the matter, I am of the clear view that the injury suffered is not an employment injury and therefore, the mere availing of the leave facility cannot be construed that he availed the benefit under the E.S.I. Act and therefore, the facts in the reported case are quite different from the facts on hand and thereby, it is not applicable to the facts of the present case.

26. Similarly, the Apex Court in the decision *Western India Plywood Limited's case, supra*, at para 11 observed thus:

"In view of the aforesaid observations in *Trehan's case, supra*, with which we respectfully agree, it is clear that the respondent could not make a claim for damages. Section 53 disentitles an employee who has suffered an employment injury from receiving or recovering compensation or damages under the Workmen's Compensation Act or any other law for the time being in force or otherwise. The use of the expression "or otherwise" would clearly indicate that this section is not limited in ousting the relief claimed only under any statute but the wordings of the section are such that an insured person would not be entitled to make a claim in torts which has the force of law under the E.S.I. Act. Even though the E.S.I. Act is a beneficial legislation the legislature had thought it fit to

prohibit an insured person from receiving or recovering compensation or damages under any other law, including torts, in cases where the injury had been sustained by him is an employment injury".

Here also, it is clearly pointed out that the person who has availed the benefit under the E.S.I. Act is precluded from availing the benefit of compensation or damages under any other law including torts where the injury has been sustained by him is an employment injury. As already held, that the injury suffered is not an employment injury. In that view of the matter, even the decision relied upon by the learned Counsel for the respondent is of no avail.

27. In the decision in Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, , at para 29, it is observed as follows:

"Although the facts of this case are quite dissimilar, the principles laid down in this case are instructive and should be borne in mind. In order to succeed, it has to be proved by the employee that (1) there was an accident (2) the accident had a casual connection with the employment and (3) the accident must have been suffered in course of employment. In the facts of this case, we are of the view that the employee was unable to prove that the accident had any casual connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment".

In order to bring out a nexus between an accident and to his employment, three essential ingredients have to be proved. Firstly, there must be an accident; secondly, that the accident had a casual connection with the employment and thirdly, the accident must have been suffered in the course of employment. If all these three ingredients are proved, it is to be held that the injury suffered is one of employment injury. In the case on hand, all the above three ingredients are absent and thereby, it is clear from the facts of the case that the injury suffered by the claimant is not an employment injury. In that view of the matter, the petition u/s 110-A of the Motor Vehicles Act is very well maintainable to claim compensation for the injuries suffered though he has availed only leave facility. In that view of the matter, the dismissal of the Claims Petition by the Claims Tribunal is not based on proper appreciation of the facts and therefore, liable to be interfered with.

28. For the foregoing reasons, I am of the clear opinion that the injuries suffered do not come within the meaning of employment injury. In that view of the matter, the appeal is hereby allowed and the claimant is entitled for the compensation awarded by the Tribunal.

29. In view of the peculiar circumstances of the case, the parties shall bear their own costs.